SUPREME COURT OF THE UNITED STATES.

No. 351.

THE BOARD OF SUPERVISORS OF MARSHALL COUNTY, PLAINTIFFS IN ERROR,

vs.

ROBERT C. SCHENCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of the district court of the United States for said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Monday, the twenty-second day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first year.

WM. H. BRADLEY, *Clerk.*

ROBERT C. SCHENCK
vs.
THE BOARD OF SUPERVISORS OF MARSHALL COUNTY. } In assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered that on the second day of April, in the year of our Lord one thousand eight hundred and sixty-six, came Robert C. Schenck, plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons against the Board of Supervisors of Marshall County, defendant, and also, at the same time, filed his bond for costs in said entitled cause; which said præcipe and bond are respectively in the words and figures following, to wit:

Præcipe.

Circuit court of the United States for the northern district of Illinois, to May term, A. D. 1866.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

ROBERT C. SCHENCK
vs.
THE BOARD OF SUPERVISORS OF MARSHALL COUNTY. } Assumpsit. Damages $5,000.

The clerk will please issue a summons in the above-entitled cause, returnable as above, to be directed to the marshal of the northern district of Illinois to execute.

SCAMMON, McCAGG & FULLER,
Plaintiff's Att'ys.

3 To WILLIAM H. BRADLEY, Esq.

Indorsed: Filed April 2d, 1866.

WM. H. BRADLEY, *Clerk.*

Bond.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

United States circuit court for the northern district of Illinois, May term, A. D. 1866.

ROBERT C. SCHENCK
vs.
THE BOARD OF SUPERVISORS OF MARSHALL COUNTY.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in

this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of the United States.

Dated this second day of April, A. D. 1866.

SCAMMON, McCAGG & FULLER.

Indorsed: Filed April 2d, 1866.

WM. H. BRADLEY, *Clerk.*

On the same day, to wit, the 2d day of April, A. D. 1866, a writ of
4 summons issued out of said clerk's office against said defendants in said entitled cause; which said writ, together with the return of the marshal thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon the Board of Supervisors of Marshall County, if it shall be found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois at the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of May next, to answer unto Robert C. Schenck in a plea of trespass on the case upon promises, to his damages, as he alleges, of five thousand dollars. And have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the United States of America, at Chicago aforesaid, this 2d day of April, in the year of our
5 Lord one thousand eight hundred and sixty-six, and of our independence the 90th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[50-ct. U. S. rev. stamp, canc'ld.]

I have on this 9th day of April, A. D. 1866, served the summons hereto attached upon the Board of Supervisors of Marshall County, the defendant therein named, there being no chairman of said board acting, in manner following, to wit, by reading the same to and in the presence and hearing of Thomas A. McMorris, the clerk of the board of supervisors of Marshall county, and delivering to him as such clerk a true copy thereof, and by reading the same to and in the presence and hearing of, and leaving a true copy thereof with, each of the three following named persons as members of said Board of Supervisors, to wit, Robert Clark, Amasa Garrett, and Washington E. Cook, they being three members of said board.

J. R. JONES, *U. S. Marshal,*
By P. MUNSON, *Deputy.*

Indorsed: Filed May 5th, A. D. 1866.

WM. H. BRADLEY, *Clerk.*

6 On this day, to wit, the 11th day of May, A. D. 1866, came said plaintiff by his attorneys, and filed in said clerk's office his declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern district of Illinois*:

Circuit court of the United States in and for the northern district of Illinois, to May term, A. D. 1866.

Robert C. Schenck, a citizen of the State of Ohio, plaintiff in this suit, by Scammon, McCagg & Fuller, his attorneys, complains of the Board of Supervisors of Marshall County, citizens of the State of Illinois, incorporated by that name by the said State, and having their only place of business therein, defendant in this suit, who have been summoned, &c., of a plea of trespass on the case upon promises—

For that, whereas the said county of Marshall, by its properly constituted authorities, heretofore, to wit, on the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-six, at Marshall county, to wit, at said northern district of Illinois, made and issued its thirty certain bonds or writings obligatory, duly sealed and executed, and numbered as follows, to wit:

Nos. 1, 2, 3, 19, 20, 21, 22, 23, 25, 27, 28, 29, 32, 33, 59, 62, 63, 64, 65,
7 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and one numbered blank, and then and there delivered said bonds to the Western Air Line Railroad Company, a corporation created and established by the law of the State of Illinois, in and by which said bonds, and each of them, dated the day and year aforesaid, the said county of Marshall acknowledged itself to be indebted to the said Western Air Line Railroad Company, or to the bearer of each of said bonds, in the sum of one thousand dollars, lawful money of the United States, with interest thereon at the rate of six per cent. per annum, at the American Exchange Bank, in the city of New York, and the said county of Marshall, in and by said bonds, and each of them, promised to pay the said sum of one thousand dollars on each of said bonds to the said Western Air Line Railroad Company, or to the bearer, on the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-six, at the said American Exchange Bank, in the city of New York, with interest thereon, computing from the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-six, at the rate of six per cent. per annum, payable semi-annually on the first days of March and September in each year, until the said principal sum should be paid, or presentation of the annexed interest coupons, respectively, at the said American Exchange Bank, in the city of New York.

8 And whereas, also, the said county of Marshall heretofore, to wit, on the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-six, at Marshall county, to wit, at the said northern district of Illinois, made and annexed to the said bonds, so numbered as aforesaid, a large number of interest coupons, to wit, forty coupons to each of said bonds, which said coupons so annexed to said bonds, and thereby made a part thereof, the said county of Marshall then and there delivered to the said Western Air Line Railroad Company, by one of which said coupons the said county of Marshall promised to pay to the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 1; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 2; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest
9 due on one of the aforesaid bonds, numbered 3; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first

day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 19; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 20; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 21; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 22; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 23; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 25; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 27; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 28; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 29; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 32; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 33; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 59; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 62; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 63; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 64; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 65; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New

York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 66; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 67;

13 and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 68; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 69; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 70; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 71; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank,

14 in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 72; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 73; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 74; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered 75; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of September, A. D. 1865, thirty dollars, interest due on one of the aforesaid bonds, numbered blank.

15 And the said plaintiff says that afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and before the maturity of the said coupons, the said Western Air Line Railroad Company duly assigned and delivered to the plaintiff the aforesaid several bonds and coupons thereto attached, whereby the plaintiff became the legal holder and owner thereof, and entitled to demand and recover of and from said defendants the several sums of money due upon said bonds and the said coupons thereto attached, of which the said defendants then and there had notice.

And the said plaintiff further says that afterwards, when said coupons became due and payable according to the tenor and effect thereof, to wit, on the first day of September, A. D. 1865, at the American Exchange Bank, in the city of New York, to wit, at the northern district aforesaid, the said coupons, and each of them, were duly presented and shown for payment thereof, and payment of the money therein specified was then and there duly required according to the tenor and effect of said coupons, but that neither the treasurer of the said county of Marshall nor the said defendants, nor any other person or persons on behalf of the said county of Marshall or of the said defendants, did or would

16 at the time when the said coupons were so presented for payment as aforesaid, or at any time before or since, pay the said sums of money therein specified or any part thereof, but wholly neglected and refused so to do, of which the said defendants afterwards, to wit, on the day and year last aforesaid at, to wit, said northern district, then and there had notice.

And the said plaintiff further avers that afterwards, to wit, on the thirtieth day of September, A. D. 1865, the said coupons, and each and every one of them, were by the said plaintiff presented and shown for payment at the office of the treasurer of the said couty of Marshall, at said county, to wit, at said northern district of Illinois, and payment thereof demanded, which was then and there refused, of which the said defendants then and there had notice.

Whereby, and in consideration of the premises, the said defendants became liable and then and there promised to pay to the said plaintiff the several sums of money in said coupons specified, with the interest thereon, at, to wit, the said northern district. Yet, although often requested so to do, the said defendants have not paid the same or any part thereof.

Also, for that, whereas the said county of Marshall, by its properly
17 constituted authorities, heretofore, to wit, on the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-six, at Marshall county, to wit, at said northern district of Illinois, made and issued its thirty certain bonds or writings obligatory, duly sealed and executed, and numbered as follows, to wit, numbers 1, 2, 3, 19, 20, 21, 22, 23, 25, 27, 28, 29, 32, 33, 59, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and one numbered blank, and then and there delivered said bonds to the Western Air Line Railroad Company, a corporation created and established by the law of the State of Illinois, in and by which said bonds and each of them, dated the day and year aforesaid, the said county of Marshall acknowledged itself to be indebted to the said Western Air Line Railroad Company, or to the bearer of each of said bonds, in the sum of one thousand dollars, lawful money of the United Stated, with interest thereon at the rate of six per centum per annum, at the American Exchange Bank, in the city of New York, and the said county of Marshall, in and by said bonds, and each of them, promised to pay the said sum of one thousand dollars on each of said bonds to the said Western Air Line Railroad Company, or to the bearer, on the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-six, at the
18 said American Exchange Bank, in the city of New York, with interest thereon, computing from the twelfth day of September in the year of our Lord one thousand eight hundred and fifty-six, at the rate of six per centum per annum, payable semi-annually on the first day of March and September in each year, until the said principal sum should be paid, on presentation of the annexed interest coupons, respectively, at the said American Exchange Bank, in the city of New York.

And whereas, also, the said county of Marshall heretofore, to wit, on the twelfth day of September, in the year of our Lord one thousand eighteen hundred and fifty-six, at Marshall county, to wit, at the said northern district of Illinois, made and annexed to the said bonds so numbered as aforesaid, a large number of interest coupons, to wit, forty coupons, to each of said bonds, which said coupons so annexed to said bonds, and thereby made a part thereof, the said county of Marshall then and there delivered to the said Western Air Line Railroad Company, by one which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in
19 the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 1; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the

aforesaid bonds, numbered 2; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 3; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 19; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars interest due on one of the aforesaid bonds, numbered 20; and by another
20 of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 21; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 22; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 23; and by another of which said coupons, the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 25; and by another of
21 which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 27; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 28; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 29; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 32; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American
22 Exchange bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 33; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 59; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 62; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 63; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city or New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 64; and by

23 another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866; thirty dollars, interest due on one of the aforesaid bonds, numbered 65; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest on one of the aforesaid bonds, numbered 66; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 67; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due one of the aforesaid bonds, numbered 68; and by another of which said coupons the said county of Marshall promised to
24 pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 69; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on the aforesaid bonds, numbered 70; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 71; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 72; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of
25 the aforesaid bonds, numbered 73; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 74; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered 75; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, interest due on one of the aforesaid bonds, numbered blank.

And the said plaintiff says that afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and before the maturity of the said coupons, the said Western Air Line Railroad Company, duly assigned and delivered to the plaintiff the aforesaid several bonds and coupons thereto, whereby the plaintiff became the legal holder and owner thereof, and entitled to demand and recover of and from said defendants the several sums of money due upon said bonds and the said coupons thereto attached, of which the said defendants then and there had notice.

26 And the said plaintiff further says that afterwards, when said coupons became due and payable, according to the tenor and effect thereof, to wit, on the first day of March, A. D. 1866, at the American Exchange Bank, in the city of New York, to wit, the northern district aforesaid, the said coupons, and each of them, were duly presented and shown for payment thereof, and payment of the money therein specified was then and there duly required according

to the tenor and effect of said coupons, but that neither the treasurer of the said county of Marshall nor the said defendants, nor any other person or persons on behalf of the said county of Marshall or of the said defendants, did or would at the time when the said coupons were so presented for payment as aforesaid, or at any time before or since, pay the said sums of money therein specified, or any part thereof, but wholly neglected and refused so to do, of which the said defendants afterwards, to wit, on the day and year last aforesaid, at, to wit, said northern district, then and there had notice.

And the said plaintiff further avers that afterwards, to wit, on the thirty-first day of March, A. D. 1866, the said coupons, and each and every one of them,
were by the said plaintiff presented and shown for payment at the office
27 of the treasurer of the said county of Marshall, at said county, to wit,
at said northern district of Illinois, and payment thereof demanded, which was then and there refused, of which the said defendants then and there had notice; thereby, and in consideration of the premises, the said defendant became liable, and then and there promised to pay to the said plaintiff the several sums of money in said coupons specified, with the interest thereon at, to wit, the said northern district. Yet, although often requested so to do, the said defendants have not paid the same or any part thereof.

Also, for that, whereas the said county of Marshall, by its properly constituted authorities, heretofore, to wit, on the sixteenth day of January, in the year of our Lord one thousand eight hundred and fifty-six, at Marshall county, to wit, at said northern district of Illinois, made and issued its two certain bonds or writings obligatory, duly sealed and numbered as follows, to wit, numbers 8 and 10, and then and there delivered said bonds to the Western Air Line Railroad Company, a corporation created and established by the law of the
28 State of Illinois, in and by which said bonds and each of them, dated
the day and year aforesaid, the said county of Marshall acknowledged itself to be indebted to the said Western Air Line Railroad Company, or order, in the sum of one thousand dollars, lawful money of the United States, with interest thereon at the rate of six per centum per annum, and the said county of Marshall, in and by said bonds and each of them, promised to pay the said sum of one thousand dollars on each of said bonds to the said Western Air Line Railroad Company, or order, on the sixteenth day of January, in the year of our Lord one thousand eight hundred and seventy-six, with interest thereon, computing from the sixteenth day of January, A. D. 1856, at the rate of six per centum per annum, payable annually, on the first day of March in each year, until the said principal sum should be paid, on presentation of the annexed interest coupons, respectively, at the city of Lacon, to wit, at the northern district aforesaid.

29 And whereas, also, the said county of Marshall heretofore, to wit, on
the sixteenth day of January, in the year of our Lord one thousand eight hundred and fifty-six, at Marshall county, to wit, at said northern district of Illinois, made and annexed to the said bonds so numbered as aforesaid a large number of interest coupons, to wit, nineteen coupons to each of said bonds, which said coupons so annexed to said bonds and thereby made a part thereof, the said county of Marshall then and there delivered to the said Western Air Line Railroad Company, by one of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the first day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 8, and by another of which said coupons the said county of Marhsall promised to pay the bearer thereof, at the city of Lacon, on the first day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 10.

And the said plaintiff says that afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-eight, and

30 before the maturity of the said coupons, the said Western Air Line Railroad Company duly assigned, by indorsement upon the back of said bonds, and delivered to the plaintiff the aforesaid several bonds and coupons thereto attached, whereby the plaintiff became the legal holder and owner thereof, and entitled to demand and recover of and from said defendants the several sums of money due upon said bonds and the said coupons thereto attached, of which the said defendants then and there had notice.

And the said plaintiff further says that afterwards, when said coupons became due and payable according to the tenor and effect thereof, to wit, on the first day of March, A. D. 1866, at the office of the treasurer of the said county of Marshall, at the city of Lacon, at said county, to wit, at the said northern district, the said coupons, and each of them, were duly presented and shown for payment thereof, and payment of the money therein specified was then and there duly required according to the tenor and effect of said coupons, but that neither the treasurer of the said county of Marshall nor the said defendants, nor any
31 other person or persons on behalf of the said county of Marshall or of the said defendants, did or would at the time when the said coupons were so presented for payment as aforesaid, or at any time before or since, pay the said sums of money therein specified or any other part thereof, but wholly neglected and refused so to do, of which the said defendants afterwards, to wit, on the day and year last aforesaid, at, to wit, said northern district, then and there had notice; whereby and in consideration of the premises the said defendants became liable and then and there promised to pay to the said plaintiff the several sums of money in said coupons specified, with the interest thereon, at, to wit, the said northern district, yet, although often requested so to do, the said defendants have not paid the same or any part thereof.

4th count.

Also, for that, whereas the said county of Marshall, by its properly constituted authorities heretofore, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and fifty-seven, at Marshall county, to wit, at said northern district of Illinois, made and issued its three certain bonds
32 or writings obligatory, duly sealed and numbered as follows, to wit, numbers 78, 79, and 80, and then and there delivered said bonds to the Western Air Line Railroad Company, a corporation created and established by the laws of the State of Illinois, in and by which said bonds, and each of them, dated the day and year aforesaid, the said county of Marshall acknowledged itself to be indebted to the said Western Air Line Railroad Company in the sum of one thousand dollars, lawful money of the United States, with interest thereon at the rate of six per centum per annum, and the said county of Marshall in and by said bonds, and each of them, promised to pay the said sum of one thousand dollars on each of said bonds to the said Western Air Line Railroad Company, or order, on the second day of March, in the year of our Lord one thousand eight hundred and seventy-seven, with interest thereon, computing from the second day of March, A. D. 1857, at the rate of six per centum per annum, payable annually, on the second day of March in each year, until the said principal sum should be paid, on presentation of the annexed interest coupons, re-
33 spectively, at the city of Lacon, to wit, at the northern district aforesaid.

And whereas, also, the said county of Marshall heretofore, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and fifty-seven, at Marshall county, to wit, at said northern district of Illinois, made and annexed to the said bonds so numbered as aforesaid, a large number of interest coupons, to wit, twenty coupons to each of said bonds, which said coupons so annexed to said bonds, and thereby made a part thereof, the said county of Marshall then and there delivered to the said Western Air Line Rail-

road Company, by one of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1865, sixty dollars, interest due on one of the aforesaid bonds, numbered 78; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1865, sixty dollars, interest due on one of the aforesaid
34 bonds, numbered 79; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1865, sixty dollars, interest due on one of the aforesaid bonds, numbered 80.

And the said plaintiff says that afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-eight, and before the maturity of the said coupons, the said Western Air Line Railroad Company duly assigned, by indorsement upon the back of said bonds, and delivered to the plaintiff the aforesaid several bonds and coupons thereto attached, whereby the plaintiff became the legal holder and owner thereof and entitled to demand and recover of and from said defendants the several sums of money due upon said bonds and the said coupons thereto attached, of which the said defendants then and there had notice.

And the said plaintiff further says that afterwards, when said coupons
35 became due and payable according to the tenor and effect thereof, to wit, on the second day of March, A. D. 1865, at the office of the treasurer of the said county of Marshall, at the city of Lacon, at said county, to wit, at the said northern district, the said coupons, and each of them, were duly presented and shown for payment thereof, and payment of the sums of money therein specified was then and there duly required according to the tenor and effect of said coupons, but that neither the treasurer of the said county of Marshall nor the said defendants, nor any other person or persons on behalf of the said county of Marshall or of the said defendants, did or would at the time when the said coupons were so presented for payment as aforesaid, or at any time before or since, pay the said sums of money therein specified or any part thereof, but wholly neglected and refused so to do, of which the said defendants afterwards, to wit, on the day and year last aforesaid, at, to wit, said northern district, then and there had notice; whereby and in consideration of the premises, the
36 said defendants became liable and then and there promised to pay to the said plaintiff the several sums of money in said coupons specified, with the interest thereon, at, to wit, the said northern district. Yet, although often requested so to do, the said defendants have not paid the same or any part thereof.

Also, for that, whereas the said county of Marshall, by its properly constituted authorities, heretofore, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and fifty-seven, at Marshall county, to wit, at said northern district of Illinois, made and issued its seven certain bonds or writings obligatory, duly sealed and numbered as follows, to wit, numbers 77, 78, 79, 80, 84, 96, and 98, and then and there delivered said bonds to the Western Air Line Railroad Company, a corporation created and established by the laws of the State of Illinois, in and by which said bonds and each of them, dated the day and year aforesaid, the said county of Marshall acknowledged itself to be indebted to the said Western Air Line Railroad Company in the
37 sum of one thousand dollars, lawful money of the United States, with interest thereon at the rate of six per centum per annum, and the said county of Marshall in and by said bonds and each of them promised to pay the sum of one thousand dollars on each of said bonds to the said Western Air Line Railroad Company, or order, on the second day of March, in the year of our Lord one thousand eight hundred and seventy-seven, with interest thereon, computing from the second day of March, A. D. 1857, at the rate of six per

centum per annum, payable annually, on the second day of March in each year, until the said principal sum should be paid on presentation of the annexed interest coupons, respectively, at the city of Lacon, to wit, at the northern district aforesaid.

And whereas, also, the said county of Marshall heretofore, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and fifty-seven, at Marshall county, to wit, at said northern district of Illinois, made
38 and annexed to the said bonds so numbered as aforesaid, a large number of interest coupons, to wit, twenty coupons to each of said bonds, which said coupons so annexed to said bonds, and thereby made a part thereof, the said county of Marshall then and there delivered to the said Western Air Line Railroad Company, by one of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 77; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 78; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 79; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 80;
39 and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 84; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 96; and by another of which said coupons the said county of Marshall promised to pay the bearer thereof, at the city of Lacon, on the second day of March, A. D. 1866, sixty dollars, interest due on one of the aforesaid bonds, numbered 98.

And the said plaintiff says that afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-eight, and before the maturity of the said coupons, the said Western Air Line Railroad Company, duly assigned, by indorsement upon the back of said bonds, and delivered to the plaintiff the aforesaid several bonds and coupons thereto attached, whereby the plaintiff became the legal holder and owner thereof, and entitled to de-
40 mand and recover of and from said defendants the several sums of money due upon said bonds, and the said coupons thereto attached, of which the said defendants then and there had notice.

And the said plaintiff further says that afterwards, when said coupons became due and payable according to the tenor and effect thereof, to wit, on the second day of March, A. D. 1866, at the office of the treasurer of the said county of Marshall, at the city of Lacon, at said county, to wit, at the said northern district, the said coupons, and each of them were duly presented and shown for payment thereof, and payment of the sums of money therein specified was then and there duly required according to the tenor and effect of said coupons, but that neither the treasurer of the said county of Marshall nor the said defendants, nor any other person or persons on behalf of the said county of Marshall, or of the said defendants, did or would at the time when the said coupons were so presented for payment as aforesaid, or at any time before or since, pay the sums of money therein specified, or any part thereof, but wholly neglected and refused so to do, of which the said defendants afterwards, to wit, on the day and
41 year last aforesaid, at, to wit, said northern district, then and there had

notice; whereby and in consideration of the premises, the said defendants became liable, and then and there promised to pay to the said plaintiff the several sums of money in said coupons specified, with the interest thereon, at, to wit, the said northern district. Yet, although often requested so to do, the said defendants have not paid the same or any part thereof.

And whereas, also, the said defendants afterwards, to wit, on the thirty-first day of March, A. D. 1866, to wit, at the northern district aforesaid, became and were indebted to the said plaintiff in the further sum of five thousand dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendants, and at the like request of the said defendants, and in the like sum for other money by the said plaintiff before that time paid, laid out, and expended for the said defendants and at the request of the said defendants, and in the like sum for other money by the said defendants before that time had and received to and for the use of the said plaintiff, and in
42 the like sum for other money before that time and then due and owing the said plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendants to said plaintiff, and in the like sum for the price and value of work then done and material for the same provided by the plaintiff for the defendant and at the like special request of the defendants; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money, before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendants then and there were
43 found to be in arrear and indebted to the said plaintiff in the further sum of five thousand dollars, of the like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiff, and the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless, the said defendants (although often requested, &c.,) have not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiff five thousand dollars. And therefore the said plaintiff brings suit, &c.

SCAMMON, McCAGG & FULLER,
Plaintiff's Attorney.

44 *Copy of instruments sued on.*

$30. Western Air Line Railroad Company.—Bond No. 1. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 2. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 3. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. COOK, *Clerk.*

45 $30. Western Air Line Railroad Company.—Bond No. 19. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 20. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 21. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

46 $30. Western Air Line Railroad Company.—Bond No. 22. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 23. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 25. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

47 $30. Western Air Line Railroad Company.—Bond No. 27. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 28. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 32. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

48 $30. Western Air Line Railroad Company.—Bond No. 33. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 62. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 63. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

49 $30. Western Air Line Railroad Company.—Bond No. 64. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 65. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 66. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

50 $30. Western Air Line Railroad Company.—Bond No. 67. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 68. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 69. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

51 $30. Western Air Line Railroad Company.—Bond No. 70. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 71. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 72. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

52 $30. Western Air Line Railroad Company.—Bond No. 73. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman,*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 74. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 75. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

53 $30. Western Air Line Railroad Company.—Bond No. 1. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 2. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 3. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

54 $30. Western Air Line Railroad Company.—Bond No. 19. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 20. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 21. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

55 $30. Western Air Line Railroad Company.—Bond No. 22. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

G. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 23. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

G. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 25. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

56 $30. Western Air Line Railroad Company.—Bond No. 27. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman,*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 28. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 32. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

57 $30. Western Air Line Railroad Company.—Bond No. 33. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 62. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 63. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.) C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

58 $30. Western Air Line Railroad Company.—Bond No. 64. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.) C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 65. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.) C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 66. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.) C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

59 $30. Western Air Line Railroad Company.—Bond No. 67. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.) C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 68. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.) C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 69. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.) C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

60 $30. Western Air Line Railroad Company.—Bond No. 70. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.) C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 71. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 72. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

61 $30. Western Air Line Railroad Company.—Bond No. 73. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 74. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 75. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W E. COOK, *Clerk.*

62 Bond No. 8. $60. Coupon No. 10.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the first day of March, 1866, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
SAM'L MAXWELL, *Treasurer.*

Bond No. 10. $60. Coupon No. 10.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the first day of March, 1866, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
SAM'L MAXWELL, *Treasurer.*

Bond No. 78. $60. Coupon No. 8.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1865, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

63 Bond No. 79. $60. Coupon No. 8.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1865, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

Bond No. 80. $60. Coupon No. 8.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1865, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

Bond No. 77. $60. Coupon No. 9.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1866, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
SAM'L MAXWELL, *Treasurer.*

64 Bond No. 78. $60. Coupon No. 9.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1866, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

Bond No. 79. $60. Coupon No. 9.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1866.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

Bond No. 80. $60. Coupon No. 9.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1866, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

65 Bond No. 84. $60. Coupon No. 9.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1866, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

Bond No. 96. $60. Coupon No. 9.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1866, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

Bond No. 98. $60. Coupon No. 9.

The county of Marshall, State of Illinois, will pay sixty dollars on this coupon on the second day of March, 1866, at the city of Lacon.

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*
——— ———, *Treasurer.*

66 $30. Western Air Line Railroad Company.—Bond No. 29. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 59. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. —. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of September, 1865.

(18.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

67 $30. Western Air Line Railroad Company.—Bond No. 29. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. 59. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

$30. Western Air Line Railroad Company.—Bond No. —. $30.

The county of Marshall, State of Illinois, will pay the bearer thirty dollars, at the American Exchange Bank, in the city of New York, on the first day of March, 1866.

(19.)

C. S. EDWARDS, *Chairman.*
W. E. COOK, *Clerk.*

68 *The Board of Supervisors of Marshall County to Robert C. Schenck, Dr.*

To money lent and advanced	$5,000
money had and received to and for use of plaintiff	5,000
money paid, laid out, and expended	5,000

To interest due..... $5,000
money due on account stated..... 5,000
work and material..... 5,000

Indorsed: Filed May 11, 1866.

WM. H. BRADLEY, *Cl'k.*

69 On this day, to wit, the 21st day of June, A. D. 1866, said defendant, by its attorneys, filed in said clerk's office its plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the United States circuit court northern district, Illinois.—May term, A. D. 1866.

ROBERT C. SCHENCK
vs.
THE BOARD OF SUPERVISORS OF MARSHALL COUNTY, Illinois.

And the said defendant comes, by Bangs & Shaw, its attorneys, and defends the wrong and injury done, &c., and says that on the 28th day of February, A. D. 1853, at said county, the county court in and for the county of Marshall aforesaid made and caused to be entered of record an order in the words and figures following, to wit:

"In the matter of the Western Air Line Railroad Company.

"Now at this term it is ordered by the court that the clerk of this court issue notices for the several townships of the county of Marshall to vote for
70 or against (at the annual town-meeting in April next) a subscription of one hundred thousand dollars to the capital stock of the Western Air Line Railroad Company."

That afterwards, to wit, on the 5th day of April, A. D. 1853, at, &c., at the time and on the day named in the same order and under and in pursuance of the same and in pursuance of no other authority or order, notices having been duly posted of such election, an election was held in the several towns in said county, at the usual places of voting in the respective towns in said county, at which election the qualified voters of said county voted for and against the subscription by said county of one hundred thousand dollars to the capital stock of said railroad company, said election being duly conducted and the returns made as required by law, except that the same was ordered to be held by the county court of said county and not by the Board of Supervisors of said county. That a majority of the loyal voters in said county, taking as a basis the number
71 of votes polled at the then last preceding general election in said county, were cast at said election in favor of said subscription.

And the defendant further in fact saith that at a meeting of the Board of Supervisors of said county, held at the court-house in said county, on the 14th day of November, A. D. 1854, the said board made and entered of record an order that the said county subscribe to capital stock of said railroad company the sum of one hundred thousand dollars, and the chairman of said board was in that same order ordered and empowered to subscribe said amount of stock to said railroad company. And defendant saith that said chairman did *did* afterwards, to wit, on the 15th day of November, A. D. 1854, subscribe said amount to said stock to said railroad company for and in the name of said county.

And defendant further in fact saith that afterwards, on divers days and in payment of said subscription and by order of said board, the chairman and clerk of said board made, signed, and issued one hundred bonds, of one thousand dollars each, of said county, a portion of said bonds being payable to said

72 railroad company or order, and the remainder thereof payable to said railroad company or bearer, drawing interest at six per cent. per annum, and due in twenty years from the date thereof, with coupons thereto respectively attached for the interest thereon, and delivered the same to the said railroad company, which said bonds and coupons, so made and issued in payment of said subscription to the capital stock of said railroad, and under and in pursuance of said election and proceedings held by order of the said county court, and without any other election, order, or authority. And defendant saith that the said coupons mentioned in plaintiff's declaration are all and each of them some of the same identical coupons so issued as aforesaid and attached to the bonds aforesaid in the manner, under the authority, and for the purpose aforesaid, and not other or different.

And defendant avers that at the time of the entering of said order by said county court, to wit, on the 28th day of February, A. D. 1853, the said county was duly organized into townships, and was acting under township organization under the laws of this State, and has been so organized and acting under township organization ever since.

73 And the defendant further avers that the said Board of Supervisors of said county did not at any time order any election to be held in said county for the purpose of taking the votes of the legal voters of said county for and against subscribing to the capital stock of said railroad company. Defendant avers that the said Board of Supervisors never at any time prior to the 14th day of September, A. D. 1854, made any order or took any action on the subject of subscribing to the capital stock of said railroad company, as appears from the records of said board, which are public records.

Wherefore the defendant says that the said bonds and coupons are null and void and not authorized to be issued by law, and that said chairman and clerk had not at the time of signing the said coupons any authority to bind said defendant in manner and form as plaintiff hath alleged in his said declaration. All which the said defendant is ready to verify. Wherefore defendant prays judgment, &c.

BANGS & SHAW, *Att'ys for defendant.*

Indorsed: Filed June 21st, 1866.

WM. H. BRADLEY, *Cl'k.*

74 On this day, to wit, the 27th day of June, A. D. 1866, came said plaintiff by his attorneys, and filed in said clerk's office his replication in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

In the circuit court of the United States for the northern district of Illinois.

ROBERT C. SCHENCK
vs.
THE BOARD OF SUPERVISORS OF MARSHALL COUNTY.

And the said plaintiff, for replication to defendent's plea above pleaded, saith *precludi non*, because protesting that the election in said plea mentioned was not called and ordered by the county court of Marshall county instead of the Board of Supervisors of said county, as alleged and set forth in said plea; nevertheless, he says that the said bonds and coupons in the declaration in this cause set out and referred to, together with other bonds of like tenor and date, for one thousand dollars each, due and payable to the Western Air Line Railroad

75 Company, a corporation duly created and established under and by virtue of the laws of the State of Illinois, in twenty years after the date of said bonds, with coupons thereto attached for the interest thereon, and in all, to wit, one hundred bonds, were made and delivered on or about the day

of September, A. D. 1856, by the defendants to the said Western Air Line Railroad Company in payment for one thousand shares of the stock of the said railroad company, for which certificates of stock to that amount were then, by said railroad company, in consideration of the delivery to it of said bonds and coupons, issued and delivered to defendants and received by it in payment of said bonds, which said one thousand shares of stock have ever since been held and owned by said defendants, and under and by virtue of which they have participated in the election of officers of said company and in all other benefits and advantages attending the ownership of said stock.

And the plaintiff avers that the said bonds and coupons in the said declaration mentioned and referred to were a part of the bonds and coupons so delivered by said defendants to said railroad company, and were by said railroad
76 company immediately thereafter, to wit, on the day and year last aforesaid assigned and transferred for a valuable consideration, then and there paid by the plaintiff, to him without any notice of the proceedings which had been had either by the county court of said Marshall county or by the said defendants, in authorizing the issue and in issuing the said bonds and coupons, or any of them, other than the constructive notice which may be had from the record of such proceedings.

And the plaintiff avers that the said defendants, for the purpose of paying the interest falling due on the bonds and coupons in his declaration set out and referred to, as well as on all the other bonds issued as aforesaid, have by due legal authority levied and collected annually since and including the year 1856, on the taxable property in said county, the sum of six thousand dollars, which has been by the said defendants applied in payment of the interest as it fell due upon the identical bonds set out and referred to in his declaration in this cause, as expressed in the coupons thereto attached, and so continued to do until the maturity of the coupons in the declaration in this cause described.

Wherefore the plaintiff says that the said defendants have ratified and
77 confirmed the said bonds and coupons in the declarat on in this cause set out and referred to, and that the same are now valid and are legal and binding obligations due from the said defendants to the said plaintiff. And this he is ready to verify.

SCAMMON, McCAGG & FULLER,
Att'ys for Pl'ff.

Indorsed: Filed June 27, 1866.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the 17th day of September, A. D. 1866, came said defendant by its attorneys, and filed in said clerk's office its demurrer in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

United States circuit court, northern district, Illinois.—June term, A. D. 1866.

ROBERT C. SCHENCK
vs.
BOARD OF SUPERVISORS, MARSHALL COUNTY, Illinois. } Assumpsit.

And the said defendant saith that the replication of the said plaintiff to the said plea of the said defendant, and the matters therein contained in
78 manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that the defendant is not bound by law to answer the same. And this the said defendant is ready to verify

Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against the said defendant, &c.

By BANGS & SHAW, *Att'ys for Def't.*

Indorsed: Filed Sep't 17, 1866.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 9th day of October, in the adjourned October term A. D. 1866 of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT C. SCHENCK
vs.
THE BOARD OF SUPERVISORS OF MARSHALL COUNTY. } Assumpsit.

Now come the parties by their attorneys, and now comes on to be
79 heard the demurrer of the defendent to the replication of the plaintiff filed herein; and after hearing the arguments of counsel, the court, not being sufficiently advised in the premises, takes time to consider.

On this day, to wit, the 10th day of October, in the adjourned October term A. D. 1866 of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT C. SCHENCK
vs.
THE BOARD OF SUPERVISORS OF MARSHALL COUNTY. } Assumpsit.

The court having considered and being now fully advised upon the demurrer of the defendent to the replication of the plaintiff filed herein, overrules the same.

On this day, to wit, the 22d day of October, in the adjourned October term A. D. 1866 of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

80 ROBERT C. SCHENCK
vs.
THE BOARD OF SUPERVISORS OF MARSHALL COUNTY. } Assumpsit.

Now comes the plaintiff by his attorney, and moves the court for judgment upon the demurrer of the defendant filed herein; and it appearing to the court that the defendant has failed to make further answer herein, and that it elects to abide by its demurrer, and the premises being seen and by the court here now fully understood and mature deliberation being thereupon had, it is considered by the court that the plaintiff have and recover of the defendant his damages; but as those damages are not certainly known, and it appearing to the court that this action is instituted upon seventy-two certain coupons for the payment of money only, it is ordered that they be referred to the clerk to assess the damages thereon; and the clerk having assessed said damages to the sum of two thousand six hundred and seventy dollars and seventy-five cents and reported the same to the court, which being approved, it is thereupon considered and adjudged by the court that the said plaintiff do have and recover of the said defendant the said sum of two thousand six hundred and seventy dollars and seventy-
81 five cents, his damages so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of seventy dollars and fifteen cents.

On this day, to wit, the 29th day of October, A. D. 1866, came said defendant by its attorneys, and filed in said clerk's office its appeal bond; which said bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

THE BOARD OF SUPERVISORS of MARSHALL COUNTY, Illinois, plaintiffs in error,
vs.
ROBERT C. SCHENCK, defendant in error.
} In error.

Know all men by these presents that we, the county of Marshall, of the State of Illinois, a corporation existing and duly established by law in said State of Illinois, as principal, and Washington E. Cook and John A. McCall, of said Marshall county and State of Illinois, as sureties, are held firmly bound
82 unto the above-named Robert C. Schenck in the sum of five thousand dollars, ($5,000,) to be paid to the said Robert C. Schenck, his executors or administrators; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents. Sealed with the seal of said county of Marshall and with the seals of said sureties, and dated this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named county of Marshall hath prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered in the circuit court of the United States for the eighth judicial circuit and northern district of Illinois in favor of the said Robert C. Schenck and against the said county of Marshall, sued and impleaded in said court in the name of the Board of Supervisors of Marshall County, on the twenty-second day of October, in the year A. D. 1866, for the sum of two thousand six hundred and seventy dollars and seventy-five cents, (2,670 75,) besides costs of suit:

Now, therefore, the condition of this obligation is such that if the above-
83 named county of Marshall shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

In witness whereof John A. McCall, chairman of the board of supervisors, and Thomas A. McMorris, clerk of the county court of said Marshall county, Illinois, have this twenty-sixth day of October, A. D. 1866, aforesaid, hereunto set their hands, and the said clerk has affixed the seal of said county, at his office, in Lacon, in said county, and the said Washington E. Cook and John A. McCall, sureties above named, have hereunto set their hands and affixed their seals as sureties on the day and year last above written.

JOHN A. McCALL,
[SEAL OF COURT.] *Chairman of Board of Supervisors.*
THOMAS A. McMORRIS, *Clerk.*
[SEAL.] WASHINGTON E. COOK.
[SEAL.] JOHN A. McCALL.

84 Sealed, and delivered in presence of—
MARK BANGS.

Approved. THOMAS DRUMMOND.
Indorsed: Filed Oct. 29th, 1866.
WILLIAM H. BRADLEY, *Cl'k.*

85 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing transcript, from pages one to eighty-four, inclusive, contains a true, full, and perfect copy from the record of all the proceedings which have been had in said court in said

entitled cause of Robert C. Schenck against the Board of Supervisors of Marshall County, as the original of the same now remains in my custody. And I do further certify that the original writ of error and the citation sued out therein by the plaintiffs in error are hereto appended to this record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this twenty-fourth day of November, A. D. 1866.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

[5-ct. rev. stamp, cancelled.]

86 UNITED STATES OF AMERICA, *ss:*

The United States of America to the judges of the circuit court of the United States for the eighth circuit and northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said circuit court before you, in a suit in assumpsit between Robert C. Schenck, a citizen of the State of Ohio, plaintiff, and the Board of Supervisors of Marshall County, which said county is a corporation created by and existing under the laws of the State of Illinois, defendants, a manifest error hath happened, to the great damage of the said the Board of Supervisors of Marshall County, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be herein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December

87 next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 29th day of October, in the year of our Lord one thousand eight hundred and sixty six.

[SEAL.] WM. H. BRADLEY, *Clerk.*

88 The United States of America to Robert C. Schenck, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth judicial circuit and northern district of Illinois, wherein the Board of Supervisors of Marshall County are plaintiffs in error, and you, Robert C. Schenck, are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, of the circuit court of the United States for the eighth judicial circuit and northern district of Illinois, this 29th day of October, in the year of our Lord one thousand eight hundred and sixty-six.

THOMAS DRUMMOND.

Received a copy of this citation October 29th, 1866.

SCAMMON, McCAGG & FULLER,
Att'ys for Robert C. Schenck, Def't in error.

BRIEF OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

No. 351.

BOARD OF SUPERVISORS OF MARSHALL COUNTY,
PLAINTIFFS IN ERROR,

vs.

ROBERT C. SCHENCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

Printed at the Home Journal Office, Lacon, Ill.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, A. D. 1866.

BOARD OF SUPERVISORS OF MARSHALL COUNTY, ILLS., *Appellant*,

vs.

ROBERT C. SCHENCK, *Appellee.*

APPEAL FROM CIRCUIT COURT FOR NORTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE BY THE APPELLANT.

This was an action in assumpsit, brought by Robert C. Schenck against the appellant, to the May Term, A. D. 1866, of the said Circuit Court. The declaration counts upon divers Coupons, signed by the Chairman and Clerk of the Board of Supervisors.

To this declaration the appellant filed a special plea, alleging that on the 28th day of February, 1853, the County Court of Marshall County ordered an election to be held at the town meeting to be held in April to vote for and against a subscription by the County of $100,000 to the capital stock of the Western Air Line Railroad Company; that such election was held under said order, and resulted in favor of the subscription, and that the Board of Supervisors on the 14th of November, 1854, acting by authority of said election, subscribed $100,000 to the stock of said Railroad Company; that the Coupons sued on, and the bonds to which they were attached, were issued to said Company in payment of said subscription; that no election was ever held by order of the Board of Supervisors, to vote on the subject of such subscription, and that said County has been organized and acting under the Township organization law since prior to 28th of February, 1853; all of which appeared from the public records of said County; and on these facts the plea alleges

the bonds and coupons to have been issued without authority of law, and therefore illegal and void.

To this plea the appellee filed a special replication not denying the facts alleged in the plea, but alleging that the bonds and coupons were issued and delivered to the Company, in payment for one thousand shares of the stock of the Company, which stock was received by the County, and the County enjoyed all the benefits and advantages of a stockholder in the Company; that the bonds and coupons were immediately sold and delivered by the said Railroad Company to the plaintiff, for value, without any notice of any want of authority to execute the same, *other than the construction notice, which might be implied* from the record of said proceedings; that ever since the date of said bonds and coupons, (1856), the Board of Supervisors have annually levied and collected the necessary taxes, and paid the interest on the bonds, and that by the Acts these bonds and coupons have been ratified, and are *now* binding on the County.

To this replication the appellant filed a general demurrer which was overruled by the Circuit Court and the appellant abiding by the demurrer judgment was rendered against the appellant for the amount of the coupons declared on. The County brings the case to this Court by appeal.

The error complained of is that Circuit Court overruled the demurrer to the replication of appellee and rendered judgment thereon, when the demurrer ought to have been sustained.

This is a copy of the bonds to which the coupons in controversy were attached:

No. 77. $1,000.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS,
COUNTY OF MARSHALL.

ISSUED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF MARSHALL.

Know all men by these presents. That there is due from the County of Marshall, in the State of Illinois, to the Western Air Line Railroad Company, or Order, One Thousand Dollars, lawful money of the United States, with interest at the rate of six per cent. per annum, payable annually at the city of Lacon on the presentation and surrender of the annexed coupon. The principal is payable at Lacon, in the County of Mar-

shall, State of Illinois, twenty years after the date hereof. For the performance of all which, the faith of the County is inevitably pledged, as also the property, revenue and resources of said county.

IN WITNESS WHEREOF, Charles S. Edwards, Chairman of the Board of Supervisors, and W. E. Cook. Clerk of said County Court, and.....Treasurer of [L. S.] said County of Marshall, have this second day of March, Eighteen Hundred and Fifty Seven, hereunto set their hands, and the said Clerk has affixed the Seal of said County, at his office in Lacon, in said County.

CHARLES S. EDWARDS,
Chairman of the Board of Supervisors.

WASHINGTON E. COOK, Clerk.

SAMUEL MAXWELL, Treasurer.

These are the only statutes of Illinois that have any bearing upon the issuance of said bonds, viz:

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That whenever the citizens of any city or county in this state are desirous that said city or county should subscribe for stock in any railroad company already organized or incorporated, or hereafter to be organized or incorporated under any law of this state, such city or county may, and are hereby, authorized to purchase or subscribe for shares of the capital stock in any such company, in any sum not exceeding one hundred thousand dollars for each of said cities or counties; and the stock so subscribed for or purchased, shall be under the control of the county court of the county or common council of the city making such subscription or purchase, in all respects as stock owned by individuals.

§ 2. That for the payment of said stock, the judges of the county court of the county, or the common council of the city making such subscription or purchase, are hereby authorized to borrow money at a rate not exceeding ten per cent. per annum, and to pledge the faith of the county or city for the annual payment of the interest, and the ultimate redemption of the principal, or if the said judges or common council should deem it most advisable, they are hereby authorized to pay for such subscription or purchase in bonds of the city or county, making such sub-

scription to be drawn for that purpose, in sums not less than fifty dollars, bearing interest not exceeding ten per centum per annum; *Provided*, that no bond shall be paid out at a rate less than parvalue.

§ 3. The railroad companies already organized or incorporated, or hereafter to be organized or incorporated under the laws of this state, are hereby authorized to receive the bonds of any county or city becoming subscribers to the capital stock of such company, at par, and in lieu of cash, and to issue their bonds bearing interest not exceeding ten per centum per annum for any monies by them borrowed for the construction of their railroad and fixtures, or for the purchase of engine and cars, and for such purpose may dispose of any bonds by them received as aforesaid.

§ 4. No subscription shall be made, or purchase or bond issued, by any county or city under the provisions of this act, whereby any debt shall be created by said judges of the county court of any county, or by the common council of any city, to pay any such subscription, unless a majority of the qualified voters of such county or city, (taking as a standard the number of votes thrown at the last general election previous to the vote had upon the question of subscription under this act for county officers,) shall vote for the same; and the judges of the county court of any county, or the common council of any city, desiring to take stock as aforesaid, shall give at least thirty days notice, in the same manner as notices are given for election of state or county officers in said counties, requiring said electors of said counties or said cities to vote upon the day named in such notices, at their usual place of voting, for or against the subscription for said capital stock which they may propose to make, and said notices shall specify the company in which stock is proposed to be subscribed, the amount which it is proposed to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or in case it is proposed to borrow money to pay such subscription, then the notices shall state the terms upon which such loan is to be effected: and the opinion of the electors shall be expressed upon their ballots "for subscription," or "against subscription," and counted and returned by the judges and clerks of elections as in other cases; and if a majority of the voters of said county or city—assuming the standard aforesaid, shall be in favor of the same—such authorized subscription or purchase, or any part thereof, shall then be made by said judges or common council. In case any election had under this act is held upon a

day of a general election, then the number of votes thrown at such general election for county officers shall be the standard of the number of qualified voters as aforesaid. No bonds shall be issued under the provisions of this act by any county or city, excepting for the amounts required to be paid at the time of subscription, and for the amounts of and at the time when assessments upon all the stockholders of said company shall be regularly assessed and made payable.

§ 5. This act shall take effect from and after its passage,

APPROVED November 6, 1849.

TOWNSHIP ORGANIZATION LAW OF 1851.

ARTICLE 15.

§ 2. No county, under this organization, shall possess or exercise any corporate powers except such as are enumerated in this act, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or given.

§ 4. The powers of a county as a body politic can only be exercised by the board of supervisors thereof, or in pursuance of a resolution by them adopted.

ARTICLE 16.

§ 4. The board of supervisors of each county in this state shall have power, at their annual meetings, or at any other meeting—

To perform all other duties, not inconsistent with this act, which may be required of or enjoined on them by any law of this state to the county courts.

ARTICLE 25.

§ 9. This act shall take effect on the first day of April next.

APPROVED February 17, 1851.

Marshall county had adopted the township organization before the 28th day of February, A. D. 1853, and was *on that* day so organized and acting.

Whatever discretion or authority was vested in or delegated to the

county court of Marshall county by said Act of 1849, was by the subsequent Act of 1851 transferred to and vested in the Board of Supervisors of the county, and could thereafter be exercised *only* by the Board of Supervisors. Said Board, in virtue of said Act having succeeded to all "the powers of the county as a body politic," which, previous to the adoption of township organization, were vested in the county court.

If judicial construction of so plain a statute, as the above, which transfers said powers from the county court to the Board of Supervisors, such construction may be found repeated and uniform in the following authorities:

People vs. Brown, 11 Ills. 482.
Prettyman vs. Supervisors, 19 Ills. 412.
Clark vs. Supervisors, 27 Ills. 315.
Supervisors vs. Cook—opinion herewith.

Really, the only question in this case is:—

Had the Board of Supervisors authority to issue these bonds?

Its proper answer involves a judicial *construction* of the said statute of 1849.

The Supreme Court of Illinois has thoroughly settled both the *question* and the *construction*.

In Prettyman vs. Supervisors, 19 Ills. 412, speaking of said statute of 1849 the Court say:—

"It was urged that this Act authorizing counties to subscribe for stock in railroad companies does not confer power on the Board of Supervisors to call an election to subscribe for stock, or to issue the county bonds. The 5th Clause of the 4th Section of the 16th Article of the Act authorizing counties to adopt township organization has this provision, "that the Board of Supervisors of each county in this State shall have power, at their annual meetings, or at any other meeting, to perform all other duties not inconsistent with this Act, which may be required of, or enjoined upon them by any law of this State, to county courts," The calling an election when desired by the people, the subscription for stock, and the issuing of county bonds, were duties enjoined on county courts by the laws of this State, and such duty was not inconsistent with that Act. Under this provision the Board of Supervisors clearly had the right."

In Supervisors of Schuyler County vs. People, 25th Ills. 184, the precise point we make in this case was fully canvassed by the Court and decided against the authority claimed to exist in that case. It arose upon the construction of a statute of the State passed 14th of February, 1855, while Schuyler county was under the township organization Act of 1851, incorporating the Rock Island & Alton Railroad Company, which enacted among other things that "each of the counties through which said railroad may be located and run, shall have the power and right by the county court of such of the said counties respectively to subscribe for stock and become stockholders in said railroad, etc.," and that "each of said counties shall and it is hereby made the duty of the county court of each of said counties to order an election to be held on the first Monday in June, 1855, or at such other time, as the county court may order from time to time, and a vote to be taken in each of said counties through which the said railroad may pass, for and against the county taking stock in said railroad. If a majority of the votes cast are in favor of stock as aforesaid, it shall be the duty of the county court to subscribe, etc.," and by an amendment made two years later, the county courts of the counties through which said road passes were "authorized and directed to issue bonds in payment of all stock subscribed," and were "further authorized and empowered to levy a special tax and make all other needful regulations sufficient and adequate for the payment of interest on any bond so issued." In that case the Court say :—

"All the acts required by both these laws to be performed by the county court, were performed by the Board of Supervisors, and the county court has taken no part in them. And the important question arises, are they binding upon the county? We see no way of avoiding the conclusion that they are not. In the case of Prettyman vs. The Board of Supervisors of Tazewell County, 19 Ills. 406, a law was passed in 1849 authorizing the county court to do similar acts, and we held that the township organization law subsequently passed, transferred the power from the county court to the Board of Supervisors, and that consequently the county was bound by the acts performed by the Board of Supervisors. But here, the legislature knowing as we are bound to presume, that the county had adopted township organization, and that there was a Board of Supervisors in the county, which, by the general law was vested with general jurisdiction, over all county matters, and particularly all financial

matters, saw proper for some reason, which we are unable to divine, to confer this power upon the county court, instead, as we should suppose, of the more appropriate tribunal, the Board of Supervisors. There has been no subsequent law giving the least color to say that the power has been transferred from the county court where it was expressly vested, to the Board of Supervisors. These bonds were then executed by the Chairman of the Board of Supervisors without the least shadow of authority. As well might the Sheriff of the county, or the Circuit Clerk, have undertaken to perform these acts. There was a total want of authority and the acts were consequently void."

Clark vs. The Board of Supervisors of Hancock County, 27 Ills. 305, was a suit brought on coupons similar to these, in which said statute of 1849 the statute under which the bonds in controversy were issued was construed. The Court in that case say:—

"If an election were held without warrant of law, or if it were ordered by a power or tribunal having no authority, there would be no doubt that the whole proceeding would be absolutely void. Such an election, and every subsequent step, would be unauthorized and void, and therefore incapable of ratification, by the county authorities.

"But an election held under the authority of an order by the proper authorities, and in the main conforming to the requirements of the statute, but wanting in some particular, not essential to the power to hold an election, and acquiesced in by the people, and approved by their agents, the county authorities, would render bonds thus issued binding, when in the hands of innocent holders."

And, alluding to the said case of Schuyler County vs. The People the Court say:—

"In that case there was no authority to order the election."

In Board of Supervisors of Marshall County vs. Cook, cited above—opinion herewith given—rendered by Supreme Court of Illinois at the April Term thereof, 1866, the suit was brought to recover upon a coupon cut from one of the identical Marshall county bonds in controversy, and precisely the same questions arose, and were decided in that as are presented for decision in this. In that case the Court hold the following language:

"After a careful review of all the reasons which induced the decision in the case of Schuyler County vs. The People, and Hancock County vs. Clark, we have discovered no reason to change or modify the conclusion at which we then arrived. In the first of these cases the Board of Supervisors had called the election and issued the bonds; when the law under which they were acting only authorized the county court to call it and issue the bonds, and it was held that the bonds were absolutely void, even in the hands of Farwell, who for aught that appears, acquired them in the due course of business and for a valuable consideration. In the latter of these cases we said 'if an election were held without warrant of law or if it were ordered by a person or tribunal having no authority, there could be no doubt that the whole proceeding would be void. Such an election and every subsequent step would be unauthorized.

"But an election held under authority of an order of the proper authorities and in the main conforming to the requirements of the statute, but wanting in some particular not essential to the power to hold such an election, and acquiesced in by the people, and approved by their agents, the county authorities, would render bonds thus issued binding, when in the hands of innocent holders. * * * Whatever may be held in other States under statutes differing, no doubt, in some particulars from ours, we feel compelled to hold that an election ordered and held by that body or tribunal, authorized by the statute, is essential to the exercise of the power. To hold otherwise would be to violate a positive requirement of the statute. It would be to set at defiance the legislative will constitutionally declared and exercised for the people who are to be burthened with the debt. * * * If then the bonds were issued without authority they were void, and if void, the mere levy of taxes and payment of interest could not render them valid. We are therefore compelled to hold these bonds to be invalid, and incapable of enforcement upon the grounds set up in the pleadings the plea presented a defence, and the replication was no answer to it, and the court erred in overruling the demurrer."

Should not these decisions of the Supreme Court of Illinois form a rule of judgment in this case for this Court?

This Court as well follows the decisions of the State Courts in the

construction of their statutes, especially where such construction is uniform and settled. And it is believed that in no case hitherto, has this Court failed or declined to follow the adjudications of the State Courts, whether in the construction of their statutes or in other cases, where such adjudications have been so repeated, uniform and unanimous as are the foregoing decisions of the Illinois Courts.

From these decisions it would seem conclusive that the highest judicial tribunal of Illinois has with perfect unanimity established a "fixed and settled construction" of the statute, upon which the proper decision of this case depends. "An interpretation which has never been called in question in any of its own tribunals—'an established and uniform course of decisions'—without a single "oscillation" to disturb "the settled rule of this Court."

This rule, although so fully acknowledged, is found to run so uniformly through the decisions of this Court that we cannot refrain from giving them a hurried review.

In McKeon vs. Delaney's Lessee, 5 Cranch 22, the Court say:—

"Infinite mischief would ensue should this Court observe a different rule from that which has been long established in this State."

In Polk's Lessee vs. Wendall, *et al*, 9 Cranch 87,—

"In cases depending on the statutes of a State, this Court adopts the construction of the State, where the construction is settled, and can be ascertained."

In Daly's Lessee vs. James, 5th Wheaton 531,—

"In all cases of local law, we acknowledge an established and uniform course of decisions of the State Courts, in the respective States, as the law of this Court; that is to say, that such decisions will be as obligatory upon this Court, as they would be acknowledged to be in their own Courts."

In Thatcher vs. Powell, 6 Wheaton 119,—

"In construing the acts of the legislature of a State the decisions of the State tribunals have always governed this Court."

In Elmendorf vs. Taylor, 10 Wheaton,—

"Were this question now for the first time to be decided, a considerable contrariety of opinion respecting it would prevail in this Court; but it will be unnecessary to discuss it if the point shall appear to be settled in Kentucky. This Court has uniformly professed its disposition, in cases depending on the laws of a particular State, to adopt the construction, which the Courts of the State have given to their laws. This course is founded on the principle, supposed to be universally recognized that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. * * * On this principle the construction given by this Court to the constitution and laws of the United States, is received by all as the true construction; and on the same principle the construction given by the Courts of the several States, to the legislative acts of those States, is received as true, unless they come in conflict with the constitution, laws or treaties of the United States."

In Shelby vs. Guy, 11 Wheaton,—

In construing the words "Beyond seas," the Court say:—

"That the statute laws of the States must furnish the rule of decision to this Court, as far as they comport with the constitution of the United States, in all cases, arising within the respective States, is a position no one doubts. Nor is it questionable, that a fixed and received construction of their respective statute laws in their own Courts, makes in fact, a part of the statute law of the country, however we may doubt the propriety of that construction."

In Jackson vs. Chew, 12 Wheaton 153, the Court in referring to the case of Daly's Lessee vs. James, above, say:—

"In that case the Court adopted a single decision of the State Court upon the question. But in the case now under consideration there have been two decisions in the highest Courts of law in the State upon the identical question now in judgment, and which were in conformity to a settled course of adjudication for twenty years past."

"After such a settled course of decision and two of them in the highest Court of law in the State upon the very clause in the will now under

consideration * * * a contrary decision by this Court would present a conflict of authority between the State Courts and hose of the United States, productive of incalculable mischief * * * and would be repugnant to the principles which have always governed this Court in like cases.

Bank of Hamilton vs. Dudley's Lessee, 2d Peters 492,—

"The judicial department of every government is the rightful expositor of its laws."

In United States vs. Warren,—

"This Court according to its uniform course adopts that construction of the act, which is made by the highest Court of the State."

In Green vs. Neall's Lessee, 6 Peters 291, this Court after reviewing all the former decisions on this point say:—

"Quotations might be multiplied, but the above will show that this Court have uniformly adopted the decisions of the State tribunals respectively in the construction of their statutes * * * because in the language of the Court in the case of Shelby *et al.* vs. Gray, 11 Wheaton 361, 'a fixed and received construction by a State in its own Courts makes a parts of the statute law.'"

In McCutchon vs. Marshall, 8 Peters 220, in construing a will Court say:—

"This is a judicial interpretation by the highest Court in the State, of one of its own statutes which has always been held by this Court as conclusive; especially if such interpretation has not been called in question in its own tribunals."

In Groves vs. Slaughter, 15th Peters 449, the Court recognize and really sustain the rule, while declining to follow a decision of a State Court, given by a divided Court in a case where the point in question was not legitimately before the Court, and say:—

"It becomes necessary therefore to look into those decisions to see whether there has been such a fixed and settled construction given to the constitution as to preclude this Court from considering it an open question."

Harpending vs. Dutch Church, 16 P. 445,—

"We are bound to conform to the decisions of the State Courts of New York in the construction of their acts of limitation. Such is the settled doctrine of this Court."

Carroll vs. Safford, 3 H. 441,—

The Courts of the United States adopt as a rule of decision the established construction of local laws."

Lane vs. Vick, 3 H. 464,—

"The construction of a statute by the Supreme Court of a State is followed without reference to the interests it may effect or the parties to the suit in which its construction was involved."

In Rowan vs. Runnells, 5 H. 134, the Court on being asked to overrule a former decision in order to conform to a more recent decision of the same point by the State Court, while declining to do so, affirm the old doctrine, and say:—

"Undoubtedly this Court will always feel itself bound to respect the decisions of the State Courts, and from the time they are made, will regard them as conclusive in all cases upon the construction of their own constitution and laws."

Nesmith vs. Sheldon, 7 H. 812,—

It is the established doctrine of this Court that it will adopt and follow the decisions of the State Courts, in the construction of their own constitution and statutes when that construction has been settled by the decision of their highest tribunals. After the decision above mentioned therefore the question certified cannot be considered as open for argument in this Court.

Beauregard vs. New Orleans, 18 Hancock, 497,—

"The constitution of this Court requires it to follow the laws of the several States wherever they apply; and the habit of the Court has been to defer to the decisions of their judicial tribunals upon questions arising out of the common law of the State, especially when applied to the title

of lands. Upon cases like the present, the relation of the Courts of the United States to a State, is the same as that of her own tribunals. They administer the laws of the State, and to fulfill that duty they must find them as they exist in the habits of the people, and in the exposition of their constituted authorities. Without this, the peculiar organization of the judicial tribunals of the States, and the Union would be productive of the greatest mischief and confusion.

Pease vs. Peck, 18 H. 595,—

"In all cases where there is a settled construction of the laws of a State, by its highest judicature established by admitted precedent, it is the practice of the Courts of the United States to receive and adopt it without criticism or further inquiry."

"But when this Court have first decided a question arising under State laws, we do not feel bound to surrender our convictions on account of a contrary subsequent decision of a State Court, as in the case of Rowan vs. Runnells, 5 Howard 139. When the State Courts are not consistent, we do not feel bound to follow the last, if it is contrary to our own convictions. And much more is this the case where, after a long course of consistent decisions some new light springs up, or an excited public opinion has elicited some new doctrine subversive of former safe precedent. Cases may exist also, when a cause is got up in a State Court, for the very purpose of anticipating our decision of a question known to be pending in this Court. Nor do we feel bound in any case, in which a point is first raised in the Courts of the United States, and has been decided in a Circuit Court, to reverse that decision, contrary to our convictions, in order to conform to a State decision, made in the meantime. Such decisions have not the character of established precedent, declarative of the settled law of a State."

Suydam vs. Williamson, 24 H. 427,—

The power to establish Federal Courts, and to endow them with a jurisdiction to determine controversies between certain parties, affords no pretext, for abrogating any established law of property, or for removing any obligation of her citizens to submit to the rule of the local sovereign.

"The same question was presented in the case of League vs. Smith

at this Term from the District Court of the United States in Texas, in reference to the coast leagues in that State. This Court found a contrary opinion had prevailed in the Courts of that State, and had become a rule of property there, and without re-examining their own opinion, or making any attempt to account for or to reconcile the difference, without any hesitation applied the rule adopted in Texas, to the determination of controversies existing there."

"In the present case there is no room for doubt as to what the settled opinion of the Courts of New York is in reference to this title, and therefore no occasion for any hesitation concerning the obligation we have to perform."

Jefferson Branch Bank vs. Shelby, 1 Black 436,—

"We answer as this Court has repeatedly said, whenever an occasion has been presented for its expression that its rule of interpretation has invariably been that the constructions given by the Courts of the States to State legislation and to State constitutions have been conclusive upon this Court, *with a single exception*, and that is when it has been called upon to interpret the contracts of States 'though they have been made in the forms of law' or by the instrumentality of a State's authorized functionaries in conformity with State legislation."

Leffingwell vs. Warren, 2 Black 599,—

"The construction given to a statute of State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding upon the Courts of the United States as the text."

"This Court will follow the latest settled adjudications."

In the celebrated case of Gelpcke vs. City of Dubuque, 1 Wallace 175, which is relied upon as authority against the rule in question. The Court act upon and completely within the rule in following "the earlier decisions" of the Supreme Court of Iowa as the "*settled construction*" of the State law applicable to the bonds then in controversy. In that case the Court say:—

"These bonds were issued and put upon the market between the periods named. These adjudications cover the entire ground of this controversy. They exhaust the argument upon the subject. We could add nothing to

what they contain. We shall be governed by them, unless there be something which takes the case out of the established rule of this Court upon that subject."

This Court in that case decline to follow the more recent decisions of the Iowa Courts, because they are not the latest settled adjudications of the State Courts and because they impair the "validity and obligation" of a "contract" which "when made was valid by the laws of the State, as then expounded by all the departments of government, and administered in its Courts of justice."

They further say:—

"We are not unmindful of the importance of uniformity in the decisions of this Court, and those of the highest local Courts, giving constructions to the laws and constitutions of their own States. It is the settled rule of this Court in such cases, to follow the decisions of the State Courts."

Whatever the County of Marshall ever had to take stock and issue the bonds in question must have arisen in virtue of the statutes of 1849 and 1851 aforesaid.

The Supreme Court of Illinois has set the construction of said statutes in their bearing upon the points at issue in this case completely at rest, by the repeated and uniform decisions of an undivided Court, after mature deliberation. And in the last of said decisions—in a case brought upon a $30 semi-annual interest coupon, from one of the *same* bonds mentioned in the declaration of defendant in error, and decided upon pleadings and issues in all respects those in the case at bar—the said Court review all its former decisions upon said points, and reaffirm them, in an elaborate and exhaustive opinion.

Said construction in the language of this Court in Shelby vs. Gray, 11 Wheaton 361 "makes in fact a part of the statute law of the State." And, still further in the language of the Court in Elmendorf vs. Taylor, 10 Wheaton 152, "is received as true unless in conflict with the constitution, laws or treaties of the United States."

For this Court therefore to hold that the said Board, under the circumstances shown, had the necessary power to issue said bonds and coupons,

would be not only to disregard such settled State construction, but would also say, in effect, to the civil corporation of Illinois, you may, with impunity, disobey the will of your legislature, and impose at pleasure, burdensome taxation upon your people, by refusing obedience to an express limitation of your authority by an explicit proviso in a statute, forbidding the exercise of such power except in conformity thereto.

It would in effect be saying to Marshall County, we absolve you from all obligation to receive the statutes of Illinois and the settled judicial construction thereof by her highest Courts, as your rule of conduct.

We believe for all the foregoing reasons that this case comes fully within the established rule of the Court to follow the settled construction of the Courts of the State.

It is insisted however, that the case at bar, does not necessarily involve the construction of a statute, but only a question of commercial law, and that the decisions of State Courts, however unanimous and settled, are not obligatory upon this Court, unless they are founded upon some statute, or some positive, fixed or ancient usage, and *not* upon the general principles of commercial law, and that the questions in this case are *only* such as find their true interpretation and effects in the general principles of commercial jurisprudence.

This can not be so, for while the bonds may, in general terms, be denominated commercial paper, and are governed largely by the general principles of commercial law, yet they are plainly dependant for their existence upon the authority of a State statute, which, in the proper decision of the question at issue, must receive a judicial construction.

And even in cases where the State decisions are not founded upon statute or local usage or custom this Court have never laid down the rule as stated in said objection. It is believed there is no case, in which this Court, in fact, has declined to follow a settled and established course of adjudication, upon a given point, by a State Court.

All the rulings of this Court, relied upon by defendant in error, in support of his said position, arise in cases, in which the Court is asked to follow some one or more of irrevelant or contrarient State decisions, and

not the settled adjudications of the State Courts. And it will be observed, in all of this class of cases, that the Court declines to follow such decisions, for the reason *chiefly* that they are *conflicting* and *contradictory*, or are *varient* in some material respect from the questions in support of which they are cited, and that the statement usually added, that in cases dependent upon the principles of common law or general commercial jurisprudence the Court do not recognize State decisions as conclusive, is given merely as an additional reason, while the fact stands plainly apparent that, this Court has never yet declined to follow a uniform and settled course of State decisions, when those decisions were upon the precise point before the Court. We have, at least been wholly unable thus far to find a precedent of that sort among the reported decisions of this Court.

Swift vs. Tyson, 16 Peters 1, is the leading case in that direction. The question was, whether a *bona fide* holder of a bill of exchange, taken before its maturity, in payment of a pre-existing debt, without notice of any equities existing between the drawer and acceptor is effected by such equities.

The bill was drawn in New York. It was urged that therefore New York decisions should form the rule of judgment in this Court. The Court upon examination find those decisions conflicting. First, they hold "a pre-existing debt to be a good consideration—subsequently, that it is not—and thereafter that it *is*. After reviewing all these decisions of the New York Courts this Court say:—

"But the more recent cases have greatly shaken if they have not entirely overthrown those decisions, and seem to have brought back the doctrine to that promulgated in the earliest cases. So that to say the least of it, it admits of serious doubt, whether any doctrine upon this question can at the present time be treated as finally established; and it is certain that the Court of errors have not pronounced any positive opinion upon it."

It is also worthy of remark here that there entered into these New York cases, no question however remotely of State statute or usage, but on the contrary the only question in them was purely one of general commercial law and one which was then everywhere—even by the latest decisions of the New York Courts in conformity with the rulings in said case of Swift vs. Tyson.

In Carpenter vs. Washington Providence Insurance Company, 16 P. 495, a contract of insurance was under consideration and in reference to State decisions urged as rules of judgment, the Court remark:—

"We have not thought it necessary, upon this occasion, to go into an examination of the cases cited from the New York Reports, either upon this last point, or upon the former points. The decisions in those cases are certainly open to some of the grave doubts and difficulties suggested at the bar, as to their true bearing and results. The circumstances, however, attending them are distinguishable from those of the cases now before us, and they certainly cannot be admitted to govern it."

Clearly showing that there was no settled State adjudication upon the question then before the Court.

True, the Court, as they did also, substantially, in Swift vs. Tyson, by way of general remark, further say:—

"The questions under our consideration, are questions of general commercial law, and depend upon a contract of insurance, which is by no means local in its character, or regulated by any local policy or customs. Whatever respect therefore the decisions of State tribunals may have, on such a subject, and they certainly are entitled to great respect, they can not conclude the judgment of this Court.

In Lane vs. Vick, 3d Howard 464,—

"It is insisted that the construction of this will has been conclusively settled by the Supreme Court of Mississippi, in the case of Vick *et al.* vs. The Mayor of Vicksburg, 1 Howard, Miss., 379."

The parties in that case were not the same as those now before the Court and that decision does not effect the interest of the complainants here. The question before the Mississippi Courts was, whether certain grounds, within the town plat had been dedicated to public use. The construction of the will was incidental to the main object of the suit, and of course was not binding on any one claiming under the will.

In Foxcraft vs. Mallett, 4 Howard 353, the Court upon being desired to follow certain cited decisions of the Courts of Maine, say:—

"But upon examining the particulars of the cases cited to govern this

3 Fairfield 398; 4 Shep'ey 84–88; 14 Maine 51, it will be seen that the construction of the mortgage to the college, in respect to this reservation or condition, never appears to have been agitated."

Aside from the general rule, and the hitherto invariable practice, of this Court, of following a uniform course of State decisions, we insist that, upon general principles this case should be decided against the validity of the bonds and coupons in controversy.

"A county or other municipal corporation has no inherent right of legislation, and can not subscribe for stock in a public improvement unless authorized to do so by the legislature. Such a corporation acts wholly under a delegated authority, and can exercise no power, which is not in express terms, or by fair implication conferred upon it." And it must exercise that power substantially in the mode pointed out by the legislature, or its acts are void and incapable of ratification.

We recur then to the question. Had the Board of Supervisors power to issue the bonds and coupons in controversy?

Marshall County was organized and acting under the township organization law of 1851 before *anything* was done in the matter of subscribing said stock and issuing said bonds.

Therefore, as shown by authorities above cited, the Board of Supervisors was the *only* authority that could act at all in the premises.

An *election* was a necessary pre-requisite to the *possession* of authority, by the Board, to do any act, in the premises, subsequent to or dependent upon such election.

This election must be such an election as the law requires.

The legislature conferred upon the Board of Supervisors *only*, the authority to order the election, and that should be done by them, in substantial compliance with the statute.

This was their first step. Made so by the statute.

This step the Board never took. No election was ever ordered by

them. They therefore have ever *remained* powerless to subscribe the stock or issue the bonds.

This act of the Board in ordering said election would of necessity be a public act—as *really* as an act of the legislature. It was in fact delegated legislation, and the omission or neglect on the part of the Board to perform the act can not with reason be classed as only an irregularity or impropriety in the *holding* of an election, for no legal election could arise, to be the subject of irregularities until after such action by the Board.

Jurisdiction of the subject matter in all its subsequent stages on the part of the Board depends upon the existence of such an order. The legislature instead of deciding for them that an election should be held, or saying for them where it should be held, delegated to them the authority to decide and say those things for themselves. This was "a mode prescribed to them" by the legislature, which must be substantially adopted by them, before they could take any subsequent step. They not only do not follow this "mode" substantially but they do not *attempt* to follow it at all.

This case is plainly distinguishable from that of Commissioners of Knox County vs. Aspinwall *et al.*, 21 Howard 539, so confidently relied upon as a precedent, by defendant. In that case the election was determined upon and the day thereof fixed by the legislature, as really as were the general elections of the State.

By the act of 14th of February, 1848, the legislature of Indiana fix the election in that case "at any general election within five years after" the "books are opened." And by the amended acts of "the 15th of January, 1849, second section, it was declared to be the duty of the Sheriffs of the counties forthwith to give notice of an election to be held on the first Monday of March then next, to determine whether said county would subscribe, etc., and if a majority of the votes shall be given in favor of subscription, the County Board of Commissioners shall subscribe to said stock, etc."

The Board of Commissioners had no authority delgated to them by the legislature of Indiana, to say whether and when an election should be held. This the legislature had done for them. The act of the

Sheriff in posting the notices was merely and purely a ministerial act, with which the Board of Commissioners had no concern, and a failure on the part of the Sheriff to give such notice would only amount to an irregularity or an impropriety in the holding of an election, that had been already lawfully ordered, which would at most, only render the bonds issued thereunder voidable.

The omission by the Sheriff to post notices of an election already established and ordered by law, is never invalidating in its effect upon the general result when duly and legally held in every other respect, whether such election be general or special.

But an election held without authority of law, be it never so regular and proper in the mere manner of its holding, would confer no authority in any direction nor upon anybody. It would be a simple nullity.

Suppose for instance that the Sheriff of Knox County had given notice that said election would be held on the first Monday of *April* then next, instead of the first Monday of March, as required by the statute. and the election had been held pursuant to such notice, on the first Monday of April instead of the first Monday of March, will it be contended that such an election would have given the Board of Commissioners of Knox County any authority to subscribe stock for the County or to issue bonds in payment thereof, that would have been binding upon the County in whatever hands they might chance to be found? Is it not clear that any person dealing in them would be chargable with a knowledge of the fact that the act in pursuance of which the bonds were issued is a public statute of the State, and that by said act the election must be held on the first Monday of March then next and not on the first Monday of April -- and that he would be told by this Court were he to bring hither his suit to recover on bonds and coupons thus issued, "that for aught that appears in the case the subscription to the stock by the Board of Commissioners was made and the bonds issued in good faith to the Rail-road Company, and also sold by it, and purchased by the plaintiff in confidence of their validity, but after the best consideration the Court has been able to give to the case, it has been compelled to hold that the subscription was made and the bonds issued in violation of law, and therefore without authority and void."

In the case of Commissioners of Knox County vs. Aspinwall, the

Board of Commissioners had nothing to do with the question whether the County of Knox should hold an election or not, nor with the question of the time when the election should be held—if held at all. These both were settled for the County by the legislature. Nor had the Board of Commissioners any duty to perform respecting the notice to be given of such election. This by the statute was made the duty of the Sheriff of the County.

The fact that the election was held in substantial conformity to the statute, gave the Board of Commissioners power and jurisdiction, adequate to do all subsequent acts necessary in the premises; and the bonds issued thereunder by them, would not be void, however the irregularity of want of notice of the election might effect the question of their being *issued*, if taken advantage of in apt time.

If the statutes of Illinois, in the case at bar, had determined whether and when the election should be held in Marshall County, to vote upon the question of subscription, etc., instead of leaving both of said questions to the discretion of the Board of Supervisors of the County, and the election thus ordered had been held in all respects in conformity to the statute, except a failure on the part of the county authorities to post the usual notices of the election, the case of Knox County vs. Aspinwall would be in point as a precedent.

Suppose under said statute of Illinois, no election had been decided upon and called by any authority, neither by the County Court nor the Board of Supervisors of the County, and at the next general election of the County, after the passage of the said act, the voters of the County with one accord should vote, among other things, "for subscription" or "against subscription" by the County of One Hundred Thousand Dollars to the capital stock of the Western Air Line Railroad Company, and such vote upon being canvassed by the Board of Supervisors, should show a legal majority thereof "For Subscription," would such "a majority of the qualified voters of the County" thus voting "the same" clothe said Board of Supervisors with authority to make said subscription, and to issue valid bonds of the County in payment thereof? It clearly would not. Said Board could have no other or greater authority, in virtue of such an election, than they would have without it. No more authority than a mass meeting of the citizens of the county called by a notice

inserted in a public journal could confer, which would be no authority at all.

What greater authority then can said Board derive from a vote of "a majority of the qualified voters of the County" taken at an election wholly unauthorized by the statutes from which all the authority in the premises comes, or which is the same thing, by an election decided upon and ordered by the County Court of said Marshall County? The statutes of Illinois aforesaid, to say *nothing* of the repeated and uniform construction thereof by the Supreme Court of Illinois, show in a most clear and unequivocal manner that in this case the County Court of Marshall County had no more power or discretion or authority touching the question of the necessary election to be held in said County before the Board of Supervisors could be invested with authority to make said subscription and issue said bonds, than was possessed by the most obscure individual in the County.

It will not answer this objection, to say in the language of the Court in the case of Commissioners of Knox County vs. Aspinwall, that—

"The right of the Board to act in the execution of the authority is placed upon the fact that a majority of the votes had been cast in favor of the subscription," for as has been shown above, in the case at bar, the Board of Supervisors of the County had not arrived, so to speak, at that legal point, position or power where they had any authority to investigate and determine upon the result of any election, for they could act with reference to no election but the one which the statute had placed in their discretion and power to order, and they had ordered none, and therefore could have no duty of examining and ascertaining as to any majority at any other election, nor is it possible that "the right of the Board to act in an execution of the authority is placed upon the fact that a majority of the votes had been cast in favor of the subscription" at any other election, than the one ordered in conformity to the statute.

The mere fact that a majority, and that the required majority of the voters of the county has been given for the subscription, unless given at an election held substantially as the statute directs, can confer no authority upon the Board of Supervisors to make subscription and issue bonds. Else statutory provisions would be useless in controling and guarding the action of municipal corporations, and protecting the interest of the

citizen. Otherwise in cases like that of Aspinwall *et al.*, vs. Commissioners of the County of Daviess, 22d Howard 364, in which a majority of the votes of the county was cast for the subscription at an election ordered and held in every respect according to law, the subscription to the stock by the Board of Commissioners was made, and the bonds issued in good faith to the Railroad Company, and also sold by it, and purchased by the plaintiff in confidence of their validity, the bonds should be held to be valid, and not, as in that case, by the Court declared void, for the reason "that the subscription was made and the bonds issued in violation of law."

It certainly cannot be urged with legal consistency that such subscription made and bonds issued in violation of a constitutional statute would be made and issued any less in violation of law than when made and issued in violation of the constitution itself, for a statute made in accordance with the constitution must be as controling in its nature as is the constitution itself, and the necessity for a county to follow substantially the "*modes*" presented by such a statute as imperative as that presented by constitutional law, and consequences of disregarding them alike fatal in both.

These consequences, in their bearing upon the citizen of the county, if these municipal corporations are permitted to act with a relaxed rule, and in palpable violation of law, as hitherto laid down by all the authorities, must often become, and will almost inevitably become burdensome and oppressive in the extreme. This Court in the case of Aspinwall vs. Commissioners of the County of Daviess, has said:—

"It would be difficult to mention a subject of legislation of more public concern or in a greater degree affecting the good government of the county than that involved in the present inquiry."

The case of the Commissioners of Knox County vs. Aspinwall cannot be a precedent in this case, for in that case the legislature decided that an election should be held and fixed the day. In this the legislature did not decide that an election should be held nor did it fix the day, but left both at the discretion and subject to the official action of the Board of Supervisors. In that case only an irregularity or impropriety crept into the *holding* of the election, but nothing effecting the power which the election conferred upon the Board of Commissioners. In this there

never was any election decided upon, nor day fixed, by the only authority that could legally so decide upon and fix the day of such election. In that it required the act of the legislature ordering the election and fixing the day thereof, and an election thereunder to be held substantially in accordance with the statute, to give the Board of Commissioners of Knox County the authority to act at all in making subscription and issuing bonds, all which was done in that case. In this it required that the discretion and official action of the Board of Supervisors to decide upon and to order an election delegated to it by the legislature, should be exercised and taken and made a matter of public record in Marshall County, and an election held substantially in pursuance thereof, before the Board of Supervisors of Marshall County could have any authority whatever to canvass the votes cast at any election or to make subscription or issue bonds of the County.

It may however be urged against this position, still further in the language of the Court in that case of Commissioners of Knox County vs. Aspinwall, that—

"This view would seem to be decisive against the authority on the part of the Board to issue the bonds, were it not for a question that underlies it; and that is, who is to determine whether or not the election has been properly held, and a majority of the votes of the County cast in favor of the subscription? Is it to be determined by the Court in this collateral way in every suit upon the bond or coupon attached or by the Board of Commissioners, as a duty imposed upon it before making the subscription. The Court is of opinion that the question belonged to this Board."

But the difficulty with this objection is, the two cases are not analagous.

In that case the Court decide that the Board of Commissioners was the tribunal to determine whether an election, previously ordered by the legislature, had been properly held, whether any impropriety or irregularity had crept into the manner of holding or conducting it, such as a failure to give the required notice or to make due and proper returns thereof. It will not I think be seriously urged that the language above quoted from Commissioners of Knox County vs. Aspinwall, goes to the extent of deciding that the Board of Commissioners could conclusively

settle *any* question prior to the fact of the election itself. Their authority began only upon and after the happening of the election.

In this case the legislature authorized the Board of Supervisors to inaugurate the only means by which they could be clothed with authority to subscribe stock and issue bonds. An official act of the Board, made a public record, appointing and ordering an election was necessary to bring the Board of Supervisors down to the point, at which the duties and jurisdiction of the Board of Commissioners *began*.

In that case the Board of Commissioners was relieved, by the legislature, of any duty in the matter until the fact of the election had transpired.

In this the legislature had imposed a duty upon the Board of Supervisors to be performed prior to the holding of an election—a duty, upon the performance of which, depended all their subsequent authority.

These remarks apply with equal force to any objections based upon the decision of this Court in Bissell vs. City of Jeffersonville, 24 Howard 287, in which the Court say the Common Council of the city was the proper tribunal to determine whether the petitioners whose names were appended to the petition, constituted three-fourths of the legal voters of the city.

Here it will be seen that the Common Council had no authority to direct as to the method of *getting up* the petition. Their duties began when the petition was presented to them; their power to act *at all* in the matter come to them *with* and in *consequence of* the petition—as did the power of the Board of Commissioners of Knox County come to them with and in consequence of the election. And in each of said cases these respective corporations, having once become vested with the power by the circumstances above enumerated, it may be truthfully said of the bonds subsequently issued thereunder, while in the hands of *bona fide* holders, as was said by the Court in Gelpcke vs. City of Dubuque, 1 W. 203, "when corporation has power under any circumstances to issue negotiable securities the *bona fide* holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper."

But it is clear that such corporation must first be seen and known to *have* such power, in virtue of some "circumstances" that have actually transpired, before bonds or negotiable securities issued by it can have any validity to be impeached, and that power must be possessed by such authorities at the time they attempt to issue such securities. Any other construction of the language just quoted would be simply absurd.

Aspinwall vs. Commissioners of the County of Daviess, 22 Howard 364, is a case exactly in point to illustrate this absurdity.

In that case "the amended act of January 15, 1849, made the holding of the election in the county peremptory, on the first Monday of March (then) next, to determine the question of subscription or not to the stock."

"The election was held in pursuance of this law, and a majority of the votes of the county cast in favor of subscription," which then, without doubt, clothed the Board of Commissioners of the County of Daviess with "power to issue" the "negotiable securities" contemplated by said act and vote.

Such then being the "circumstances" "under" which the said "corporation" *then* had "power" "to issue negotiable securities." How it happened that these "negotiable securities" thereafter issued pursuant thereto, were, in the hands of *bona fide* holders declared by the Court in that case, to have been issued in violation of law "and therefore without authority and void," if our construction above be not correct?

The case at bar is yet stronger. For in that the Board of Commissioners of the County of Daviess did *once possess* the requisite power to issue the bonds, and had they taken the stock and issued the bonds before the change in the constitution, such bonds would have been valid in anybody's hands.

But in this case the Board of Supervisors of Marshall County through their own neglect were *never* clothed with the necessary authority, therefore no presumptions can obtain in favor of the bonds they have issued.

The legislature did not grant to the Board of Supervisors the power, in the first instance, to take the stock and issue the bonds, but only a

discretion and an authority, touching an act of their own, which when substantially performed by them, should of itself clothe them with that power.

In other words the legislature gave them authority to subscribe, etc., with a proviso that they should first order an election to be held, and that *such* election should result in a specified majority.

Now to say that the Board of Supervisors could claim the benefit of the general clause of the act, while they disregard the limiting proviso, would be to declare that they could disregard the will of the legislature altogether. The proviso is a vital part of the act. If not, and if a substantial compliance therewith, on the part of the Board, is not necessary to vest in the Board the power to issue bonds, then the Board could issue them *without* an election. For the act declares in the first instance, section 1, that—

"Such city or county may, and are hereby authorized to purchase or subscribe for shares of capital stock in any such company in any sum not exceeding one huudred thousand dollars for each of said counties or cities, etc." Act 1849, sec. 1, above given, which, upon the theory that the proviso, or limiting clause of the act, may be disregarded, would confer upon the county authorities power to take the stock and issue the bonds "without the sanction of the popular vote."

It certainly will not be insisted that in this case the Board of Supervisors had authority to take this stock and issue these bonds *without* an election, nor can it be that *any* "popular vote" would constitute a legal "sanction," else the proviso and prohibitory limitation of the 4th section of said act, which says no subscription shall be made, or purchase, or bonds issued by the county, unless a majority of the qualified voters of the county shall vote the same, at an election previously to be ordered and established by the county authorities, is useless and inoperative.

No, the sanction of the popular vote, were it perfectly unanimous, could confer no power upon a county to take stock and issue bonds if such vote were not taken at an election ordered in substantial conformity to the requirements of the statute. It seems clear that in this case no such election has been held. In Commissioners of Knox County vs. Aspinwall there was such an election.

In that case the acts of the legislature, and the fact of an election, were necessary pre-requisites to the existence of any power in the Board of Commissioners.

In the case of Bissell vs. City of Jeffersonville the act of the legislature and the fact of a petition, were conditions precedent to the possession, or legitimate exercise of any authority whatever on the part of the common council.

And in Mercer County vs. Hackett, 1 Wallace 83, the act of the legislature and the fact of a recommendation by the Grand Jury were facts whose existence was indispensable to the possession and exercise of any power by the Commissioners to issue bonds.

None of said bodies could have any authority or jurisdiction in the matter of making subscription or issuing bonds, or of any minor questions pertaining or necessary thereto, until, in said cases respectively, the two appropriate facts aforesaid should exist.

But this case is widely different from any of them. In this, there are no recitals of authority or conformity on the face of the bonds. In all those cases there was only a defective execution of an authority already vested. In this case there is a total want of authority. The chief fact, a public act or order of the Board of Supervisors, a fact that must exist in enduring records, ever open to the inspection of all, and constructive notice to all—a fact on which all the authority of the Board of Supervisors hangs—a fact which said Board *alone* could cause to have a legal existence—a fact without which all other acts of the Board in the premises would become and must forever remain mere nullities—is entirely wanting.

The Board of Supervisors of Marshall County therefore could have possessed no authority to issue the bonds and coupons in question. Having been thus issued and transferred they must be without validity and wholly incapable of ratification.

The argument of counsel in the corresponding case of Cook vs. Board of Supervisors of Marshall County filed in the Supreme Court of Illinois is hereto attached, to which the attention of the Court in *this case* is respectfully directed.

B. C. COOK,
Attorney for Plaintiff in Error.

THE BOARD OF SUPERVISORS, OF MARSHALL COUNTY, 231,

vs.

WASHINGTON E. COOK.

APPEAL FROM MARSHALL.
RE-HEARING ORDERED.

OPINION BY P. H. WALKER, CHIEF JUSTICE.

This was an action of assumpsit, brought for the recovery of the interest due by a coupon attached to a bond issued by the Board of Supervisors of Marshall county in payment of subscription to the Capital Stock of a Railroad Company. As a defense the county interposed a plea, that on the 28th day of February, 1853, the County Court ordered an election to ascertain whether the county should subscribe one hundred thousand dollars to the capital stock of the Western Air Line Railroad Company. That when the election was held, the county was acting under Township organization. That afterwards and without any further action in holding an election, the Board of Supervisors passed an order, that the county subscribe that sum, which subscription was afterwards made. Afterwards at the September session, the Board ordered that the bonds of the county issue to the road, in such sums as the company might require, but none less than one thousand dollars each, payable in twenty years, bearing six per cent interest, payable semi-annually. That the bonds be signed by the chairman of the Board and authenticated by the county seal. That interest coupons be attached and the bonds be delivered to the company, when it should indemnify the county against loss, by transmitting the principal and interest to the place of payment.

The plea avers that the bonds were issued in pursuance of the order, but by no other authority. To this plea a replication was filed; it does not deny any averment in the plea. It avers that this and other bonds were endorsed and delivered on the day they were issued to plaintiff. That ever since the bonds were issued, the county has paid interest, until the installment falling due upon this coupon. That for the purpose of paying interest, the county has each year levied and collected of the tax payers of the county, six thousand dollars, which has been applied semi-annually in the payment of the interest on these bonds. That certificates

of stock were delivered to the county for the amount of the subscription, which are still held by the county; that the county has participated in the election of officers of said road; that the bonds and coupons were transferred before maturity for value, without any notice, that the election had been ordered or held, under an order of the County Court, further than the constructive notice, if any such could be implied by the records of the County Court and Board of Supervisors.

To this replication a demurrer was filed, which was overruled and a judgment rendered for $30, the amount of the coupon against the county.

It is virtually admitted that the bond and coupon were irregularly issued, but it is insisted that the subsequent acts of the county render them valid and obligatory upon the county. Also having been negotiated for a valuable consideration before their maturity without any other notice than such as the law charges, the county cannot interpose a defense to them in the hands of such a holder.

The first of these questions is one of power. And it depends upon the fourth section of the act of 1849, (Scates Comp. 950) which declares, that no subscription or purchase of stock shall be made or bonds issued, by any county or city under the provisions of the act, creating a debt for the payment of such subscriptions, unless a majority of the qualified voters of such county or city shall vote for the same. It requires a notice of thirty days, giving the time of holding the election, and requiring them to vote for or against the subscription.

The fifth clause of the fourth section of article sixteen of the township organization law (Scates Com. 337) declares that the Board of Supervisors shall perform all other duties not inconsistent with the act, which was required or enjoined upon the County Courts by any law of the State. Under this provision, which was in force at the time these bonds were issued, the Board of Supervisors succeeded to all the power and duties of the County Court, and it became their duty to call elections to ascertain whether the county should subscribe stock to a railroad company and issue bonds in payment of the same. Prettyman vs. Tazewell county, 19 Ill. 406. The Board having succeeded to this power, the County Courts of the various counties acting under township organizations, cease to have the power to call such elections.

From these provisions it is manifest, that these bonds were issued without such an election as the law contemplates. Nor can an election, ordered and held without authority of law be held to answer the requirements of the statute. This is a question of authority and its legal exercise. The statute has expressly declared that the bonds shall not issue unless in pursuance of authority, conferred by a vote of the majority in favor of such subscription, at an election called in the mode pointed out by the act. The act has prescribed the manner in which the authority shall be acquired, and declares that bonds shall not issue except in that manner.

The provision of the township organization law, operated as an amendment to the law, authorizing subscriptions by counties and cities. And when the duty devolved upon the Board of Supervisors, of calling the election, it also prohibited them from issuing the bonds until an election was called, and resulted in favor of subscription precisely as it did the County Court. In counties not acting under township organization no person can suppose that an election called by the Sheriff or Justice of the Peace, would confer any power on the County Courts to issue such bonds and for the reason that such an election would be unwarranted, and would for that reason confer no power. A legally ordered election is, by the law, made an essential pre-requisite to the exercise of the power, and action by the county authorities, without performing such an act, is unwarranted, and not only so but is prohibited.

They are usually endowed with all the powers and rights of an individual so far as they can be conferred, and the power to contract debts, and to issue evidence of the same, is an incident usually attending their creation. When authorized to perform an act, unless restrained by their charter they may employ the means and perform the act in the same manner that might be done by private individuals. This is necessarily so, to effectuate the purpose of the foundation, with most private corporations.

Municipal corporation, however, being created for purposes of government, and authorized as it were to exercise to a limited extent a portion of the power of the State government, have always been held to act strictly within their charter. It is to them their fundamental law, and their power is only co-extensive with the power granted. Not being essential to the purposes and objects of their creation without an express grant of

power, for the purpose they have no authority to contract debts, binding upon the body or individuals residing within their limits. Such a power being unusual when they are created, and usually being conferred, if at all, by special enactment, and all persons being familiar with the fact, it is but natural that those who deal with them or in their obligations should see to it, that the body possesses the power to bind itself for their payment. On the other hand, the object of private corporations usually renders it necessary that they should transact such business as may involve the necessity of incurring debts. Another broad distinction exists between the two cases of corporations. The business and proceedings of a private corporation are not public, whilst those of a municipal corporation are open to the examination of the public, all of their proceedings are enrolled and become a matter of public record, open to the inspection of all persons. On the other hand the journal of the proceedings of a private corporation, is not accessible to the public, or to any one but the members of the body.

It then follows that persons dealing with municipal corporations have the right to examine, and see whether all the steps required by their charter have been taken. It is otherwise with private corporations.

Those dealing with them can only examine their charter, and if it is found that the body had under any circumstances power to create the indebtedness, the holder will be protected unless it appears that he was informed, that it was in violation of their charter. But with municipal bodies, whose records are open to the examination of all, there is not the same reason to protect a holder, as he may fully inform himself whether their action is warranted. That such a body may create a debt binding upon it, there can be no question, simply by complying with substantial requirements of their charter.

Nor will slight or immaterial deviations from the mode prescribed, invalidate such securities, in the hands of innocent holders for a valuable consideration. Such was the rule announced in Johnson vs. Stark county 24 Ill 75. Prettyman vs. Tazewell county 19 Ill 406. But on the other hand, if the body assuming to act, has no legal authority to create the debt, or if they excuse their authority or omit some essential prerequisite, the bonds are a nullity. Schuyler county vs. The people 25 Ill 181. Supervisors of Hancock county vs. Clark 27 Ill 305, and it is upon the prin-

ciple, that there is a wide difference between an act performed without authority, or in violation of law, and an act defectively performed under authority. In the former case the act is absolutely void, whilst in the latter it may become binding by ratification or by mere acquiescence.

As a rule, if not uniform of every general application, persons dealing with individuals, claiming to act for another, or with the officers of the law, and the officers of cities and counties are of that character, he must see that they have power to act. A person acting under a special authority cannot bind his principal when he exceeds it. A person dealing with one assuming to be the agent of another, must, to protect himself, know that the agent has power to act, in the premises. He must be able to show that the agent had authority, or he can acquire no rights binding upon the principal.

In case of public officers, from the highest to the lowest, they must act within the scope of their authority, or their acts will be void, and Courts to their judgments and decrees binding, must have jurisdiction of the subject matter and of the parties, and the power in all such cases, is derived from the law. But having the power, an injudicious, or even an erroneous exercise of the authority does not render the act void but merely voidable.

When a person purchases property at a sheriff or master's sale, to render his purchase availing, he must show that there was a valid and binding judgment or decree, and an execution in the one case, and an order of sale in the other. It is not sufficient to show an execution without a judgment, or even a judgment when the court had no jurisdiction of the subject of litigation or of the parties.

It is not sufficient that it appears that the officer had under any circumstances power to perform the act, but it must appear that he possessed the power in the case in which he performed the act. Nor can the question of the *bona fide* of the transaction be considered. In such cases the bidder purchases at his peril, and so of his assigns. It is a question simply of power and not of good faith. The maxim *caveat empter* applies to the acts of public officers.

The provision requiring the election and prohibiting the bonds from being issued, until the question is passed upon, and authorized by a vote, was no doubt designed to protect the county from improvident action, and

is salutary and proper in its operation. It has been held that in the absence of such authority conferred upon the county agents, by an election properly called, they will not be compelled to issue bonds. Schuyler county vs. The People 25 sec. 181, Supervisors of Hancock county vs. Clark 27 sec. 305. Fulton county vs. Mississippi and Wabash Railroad, 21 Ill. 373, and The People vs. Tazewell county 22 Ill. 147, and or between the county and the first holder, or in the hands of a person holding such bonds with notice that they were issued without authority, there can be no doubt that they are absolutely void.

Political corporations in their organization and purpose are essentially different from private corporations.

The former are created to aid in the government of the people, the latter to promote trade, manufacturers, and a variety of other interests.

It would therefore appear that the county agents only acquire jurisdiction or power to act, in the mode prescribed by the law, and the law has not only required that an election shall be held resulting in favor of a subscription and the issuing of bonds, to confer the power, but has expressly prohibited them from acting in the absence of such authority. And we have seen that the Board of Supervisors were authorized to call the election, and that the County Court acted without authority; and in doing so the election conferred no more jurisdiction on the Board of Supervisors than if it had been ordered by the sheriff or a constable of the county.

Schuyler county vs. The People, 25 Ill. 181.

In this case all of the avenues of information were open to the purchaser. The authority to issue bonds is derived from a public law, which he no doubt examined, and whether he did or not, he was bound to know its requirements. From it he saw that the Board had no power to issue these bonds until an election had been ordered by them and resulted in favor of their being issued. Such an order would of course appear upon the public record of their proceedings to which he had access, as fully as the person proposing to purchase at a sheriff sale has to the record of the judgment under which the sale is proposed to be made. Nor is it harder to require the purchaser of a bond to examine the record, to ascertain whether the Board had jurisdiction to act, than to require the purchaser to ascertain whether the court has jurisdiction to render the judgment.

After a careful review of all the reason which induced the decision in the cases of Schuyler county vs. The People, and Hancock county vs. Clark, we have discovered no reason to change or modify the conclusion at which we then arrived. In the first of these cases, the Board of Supervisors had called the election and issued the bonds when the law under which they were acting only authorized the County Court to call it, and issue the bonds, and it was held that the bonds were absolutely void, even in the hands of Farwell, who for aught that appears, acquire them in the due course of business, and for a valuable consideration. In the latter of these cases we said, "If an election were held without warrant of law, or if it were ordered by a person or tribunal having no authority, there could be no doubt that the whole proceeding would be absolutely void. Such an election, and every subsequent step, would be unauthorized. But an election held under authority of an order of the proper authorities, and in the main conforming to the requirements of the statute, but wanting in some particular not essential to the power to hold such an election, and acquiesced in by the people, and approved by their agents, the county authorities would render bonds thus issued, binding when in the hands of innocent holders." Whatever may be held in other States, under statutes differing, no doubt, in some particulars from ours, we feel compelled to hold that an election ordered and held by that body or tribunal authorized by the statute, is essential to the exercise of power. It might be different if the Legislature had not prohibited such bonds from being issued until the tribunal had called an election which had resulted in favor of issuing such bonds.

To hold otherwise would be to violate a positive requirement of the statute. It would be to set at defiance the legislative will, constitutionally declared, and exercised for the protection of the people, who are to be burthened with the debt. To hold bonds issued without an election or under an election unauthorized by law is to say that the express will of the legislature shall not be binding, and that acts in violation of express provisions of the statute, shall be as effectual as if done strictly in compliance with its acquirements

The holder was dealing with instruments issued by a municipal corporation, and he no doubt looked to the law for their authority, and if so he saw that they were required to have the election held, and were prohibited from issuing bonds until such a step had been taken. Finding the law

required such an election, there was no hardship in ascertaining by the records of the county, whether the election had been ordered and held by the Board of Supervisors.

In the absence of such an act, there was the want of power to issue the bonds, and we have no hesitation in saying that when so issued they are void in whose ever hands they may be found. It is a familiar rule that a note given or contract executed for an immoral or an illegal consideration, is held to be void in any persons hands. This case then presents no greater hardship than a case of that character. It may be said, that in the case of Johnson vs. Stark county, that the election was held in the same manner as in this case. If such was the fact, it is believed that the question was not argued, and it was not discussed in the opinion of the Court.

Nor did the Court intend to suppose that we were holding, that bonds issued under such an election were valid. It is, however, insisted that these instruments being negotiable, that a purchaser before maturity is protected unless he is chargeable with actual notice. Without stopping to enquire whether all the citizens of the municipality would not be chargeable with notice of all defects in exercising the power, it is only necessary to say that such is the general rule subject to some important exception. The term negotiable means saleable or transferable, that which may be endorsed or assigned so as to vest the legal title to a chose in action in the person to whom it is transferred, so that he may enforce the payment in his own name. Usually the negotiation before the maturity of such instruments cuts off all defenses. But instruments prohibited by law, instruments negotiable after maturity, and instruments given for a consideration *malem in se* are not embraced in the protection. There it will be seen that an instrument may be negotiable and yet not protected from a defense in the hands of an innocent holder. It does not necessarily follow, that because an instrument is negotiable that therefore an innocent holder will always be protected.

Almost every description of agreement and contract may be negotiated in equity and still all defenses may be interposed in such cases. In the case of Johnson vs. Stark County, we said that coupons annexed to such bonds were negotiable by delivery, but we did not say, nor did we intend to say, every defense was thereby cut off, when the holder might sue. We only held, that by sale and delivery, the legal title to the instrument

was transferred to the holder, and that he might sue in his own name. That was the question presented and decided. A forged note, a note executed by a person assuming without authority to act as the agent of another, and a note altered in a material part, although they may be assigned or negotiated, are not by that means rendered binding, but the same defense may be made in the hands of the assignee, as in the hands of the original holder. Neither does the negotiation of a note with notice of defense, or of such circumstances as charges the assignee, cut off a defense in his hands.

When we come to see the cases reported in Wallace's reports we find the Supreme Court of the United States have not gone so far as we had previously supposed.

In the case of Mercer County vs. Hackett, 1 Wallace 83, it was held that slight and immaterial omissions in ordering the bonds to issue, will not render them invalid in the hands of an innocent holder. In that case the recommendation was by the grand jury the body authorized by law to make it, but they did not make it in the precise language of the law, but it was substantially good. If the recommendation had been made by the petit jury, it would have presented a very different question, and one more like one under consideration than the one discussed in that case. We do not see that the Court could have done otherwise than as they did. It was not a question of power to act, but whether the action, defective it might be, was still in pursuance of the power.

It is supposed that the case of Gelckpe vs. The City of Dubuque, Wallace 175, is in conflict with the view here expressed. It will be observed, however, that so far as the record discloses in that case, the law authorizing the bonder to issue has been strictly observed in every particular before they were issued.

A curative act had likewise been passed by the legislature declaring the bond valid and binding.

That case does not, like the present, depend upon the power of the body issuing them to act, but upon other and different questions, the principal one of which was, the constitutionality of the law. Hence, that case and this differ essentially in the questions presented and discussed.

It is true the court use broad and comprehensive language. They say,

"when a corporation has the power under any circumstances, to issue or negotiate securities, the *bona fide* holder has a right to presume they were issued under the circumstances which gave the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such bondholders than any other commercial paper. If there were any irregularity in taking the votes of the election or otherwise, in issuing the bonds, it is remedied by the curative provision of the act of January 28, 1857. The court, however, do not intimate, that such instruments issued without power would be protected in the hands of any kind of a holder. The court proceed upon the grounds, that the person issuing the bonds, did so in the exercise of a power, and that if there was a defective exercise of the power, the irregularity has been cured by the act of the legislature. There is no intimation that bonds void in their inception, issued in direct violation of law, would be protected. Nor do we believe that court will so hold if the question should ever be presented for their determination.

The language employed by the court does not bear the construction that simply because the instrument bearing the form of negotiable paper, that therefore the holder, although *bona fide* is protected. No rule is better recognized in the commercial world than that the forgery of the drawer or endorsers name does not protect the holder, however innocent he may be, nor do we understand that a note declared by the statute to be void, will in the hands of an innocent holder be valid and binding, otherwise the statute would be wholly inoperative.

The principle that the holder of an instrument prohibited by statute although negotiated before its maturity, is not protected, is well illustrated in the case of Bailey vs. Fabor 5 Mass. 285. In that case, the statute had declared all notes, bills &c., of a particular denomination, issued by a banker, after a specified day, should be void.

It appears that the notes were issued after that date, but were antidated so as to appear to have been legally issued. Yet the court held they could not be enforced in the hands of an innocent holder.

The court say that it is not altogether certain, that receivers of such instruments are altogether free from blame, although not privy to the making or antedating of them. The laws of the government, the court say, are presumed to be known by all of the citizens, and if the notes were in fact made or issued after they were declared void, by statute, and

after a penalty was attached to passing them, although no penalty is expressly enacted against the receiver, yet the act of receiving them was necessary te enable the offender to pass them. To authorize the holder to maintain a suit and recover judgment on notes of their description, so situated, when the legislature declared them void, would be effectually to annul an act, the wisdom and policy of which the legislature alone has the right to judge. So in the case under consideration, to permit a recovery would be to defeat the will of the legislature expressed in the clearest manner, that bonds shall not be issued until authorized by an election called in the mode prescribed.

Official acts derive their binding force alone from the law, the uttering of county bonds, involves the necessity of levying taxes for their payment, and to that extent deprives the citizen of his property. Under the fundamental principles of our government, that cannot be done except by authority of law. Nor is it any answer to say the election resulted in a majority in favor of issuing the bonds, as majorities are as powerless to divest a person of his property as are minorities. That can by either, only be done in the manner prescribed by law, and the election being illegally called the vote failed to confer the power.

If then, the bonds were issued without authority, they were void, and if void, the mere levy of taxes and payment of interest could not render them valid. In the case of Schuyler county vs. Farwell, 25 Ill. 181, the Board of Supervisors had levied and collected taxes for the payment of interest, several instalments of which had been paid, and still it was held that the bond being void the holder could not recover. We in this case, make the distinction between the want of power in public officers to perform an act, and a case where they having power and execute it defectively. In the former case, acquiescence and treating it as having been performed in pursuance to authority, does not render the act valid, while in the latter case the defect may be of such a character that the act might become valid and binding. We are therefore compelled to hold these bonds to be invalid and incapable of enforcement on the grounds set up in the pleadings. The plea presented a defence and the replication was no answer to it, and the court erred in overruling the demurrer.

The judgment of the court below must therefore be reversed and the case remanded.

I, LORENZO LELAND, clerk of the Supreme Court of the State of Illinois, do hereby certify, that the foregoing is a true copy of the final opinion of the said Supreme Court in the above entitled cause, of record in my office.

In testimony whereof, I have set my hand and affixed the seal of the said Supreme Court, at Ottawa, this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-five.

LORENZO LELAND,
Clerk of the Supreme Court.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1864.

BOARD OF SUPERVISORS OF MARSHALL COUNTY,
Appellant,
vs.
WASHINGTON E. COOK,
Appellee.

} Appeal from Marshall.

BRIEF OF APPELLANT.

This is an action of *assumpsit* brought by appellee against appellant, on a certain Railroad Cupon, made by order of said Supervisors, and attached to the Bond of the County made in Sept. 1856, payable to the Western Air Line Railroad Company, and issued in payment of a subscription by the County to the capital stock of said Railroad Company.

The defence set up by the County is, that the Board of Supervisors made the subscription and issued the bonds without authority of law, no election having been held as required by the Act of 1849, as a prerequisite to the subscription by the Board.

The appellee, by his replication, seems to admit the original invalidity of the bonds, for the reason set up in the plea; but says that the bonds, though issued without authority, have been ratified by the county, and the acts of ratification are: first, excepting the stock and the benefits of a stock-holder; second, paying the interest on the bonds, through its Board of Supervisors.

He also insists that he is a *bona fide* holder of the bond and cupon, before maturity, and without any notice of the fact set up as a defence,

other than such constructive notice as would be given by the records of the County Court and Board of Supervisors.

This statement presents the questions:

Had the Board of Supervisors authority under the law to make the subscription and issue the bonds?

Could the Board of Supervisors, after having issued the bonds without authority, by any subsequent action of their own, ratify the bonds so as to make them binding upon the county? And has this been done?

Is not the appellee bound to take notice of the county record, and, if it appears therefrom that the necessary and proper steps had not been taken to give the Board authority to issue the bonds, is he not an assignee with notice, and in the same condition that the Railroad Company would be if the bonds were still held by it?

Then, first, had the Board of Supervisors authority under the law to make the subscription and issue the bonds?

We say they had not, and think the answer is sustained both by sound principles and the authorities.

I.

The *Board of Supervisors* were the proper tribunal to order the election to be held, to vote whether the county would make the subscription, and not the *County Court.*

A.—The Board of Supervisors were the legitimate successors to all the powers which, previous to the adoption of township organization, were vested in the County Court. "The powers of the county as a body politic can only be exercised by the Board of Supervisors thereof, or in pursuance of a resolution by them adopted."

Scates, Treat & Black. Stat. p. 336, sec. 4.
People vs. Brown *et al.* 11 Ills. 482.
Prettyman vs. Supervisors, 19 Ills. 412.
Clark vs. Supervisors, 27 do. 305.

These authorities clearly establish that the Board of Supervisors *alone* have the authority to order the election, if authorities are necessary, as we understand this point is conceded by the counsel for appellee.

II.

The election in this case having been ordered by the County Court, a tribunal having no authority to do so, is absolutely void, as also every subsequent step thereunder, and incapable of ratification by the county authorities.

A.—The powers of a county, under our township organization law, are limited and strictly defined, and the exercise of any corporate power not enumerated, or necessary to the exercise of the powers enumerated, or such as may be specially given by law, are *expressly prohibited.*

Scates, Treat & Black. Stat. p. 336, Art. 15.

B.—This is the exercise of a power specially given by law, and can only be exercised in the manner pointed out in the law, and the provisions of the law must be substantially followed. The law expressly provides that no subscription shall be made, or bonds issued, or debts contracted, until an election shall be held in such county, and a majority of the legal votes of the county shall have voted in its favor, taking as a basis the votes cast at the last preceding general election; and the judges of the County Court shall give at least thirty days notice of the election, in the same manner as notices are given for the election of State and County officers, and the notice shall specify the company in which the stock is proposed to be taken, the amount proposed to be subscribed, and the length of time the bonds are to run, and the interest they are to draw.

Scates, Treat & Black. Stat. 950.

Until these prerequisites of the statute were complied with, the Board had no authority to make the subscription. And further—not only was there a total want of authority, but there was, to make the case more plain, an express prohibition, both by the general township organization law and the Act of 1849, and the contract by the Board was *mala prohibita*, and as completely void as if it were a contract *mala in se.*

Chitty on Cont. 600.
10 N. H. 377
17 Mass 258.
22 Pick. 181.

The contract in this case would not only be void as a contract *mala prohibita*, but is void as being the contract of a corporation which are *ultra vires*—a contract which the Board had no authority under the law to make. It must be kept in view that the Board of Supervisors are not, within any proper legal sense, the agents of the county. The relation of principal and agent does not exist between them. They are the agents of the law, and look to the law for their authority to do every act limited to such as may be proper and necessary ...

which they perform; and the question as to whether the act is lawful, depends, not upon whether the people may approve it, but did the law, at the time it was done, authorize it? By this test, we apprehend, must *this* and every other act of the board be judged, and by it the contract must stand or fall.

In Clapp vs. Cedar Co., 5 Clark (Iowa,) 12,—which was a case where the County Judge had issued bonds, he being the proper person to do so under the code, the Court say: "The County Judge does not derive his authority from the county, but from the law, and the county can not revoke them." In Iowa also it was necessary to submit the question of subscription to the voters of the county.

Let us examine the authorities on the question as to the nature and effect of acts and contracts of corporations which are not within the corporate powers.

Allen, J., in 19 Barb. 52, says:

"But acts of a corporation, not within the corporate powers, *ultra vires*, are void, and the contracting parties are not estopped by the contract itself from alleging their invalidity, when they are sought to be enforced." And he refers to 3 Kern. 599.

In 3 Kern. 638, Comstock, J., in speaking on this same subject matter, says:

"But to say that he is estoppped by the instrument itself, simply because he has made it *and a third party has dealt with it*, is only asserting, in another form, that fraud, mistake, duress, illegality, want of consideration, *or want of authority*, when the act is one of pretended agency, is no defence."

The above was a case where the agents of a bank issued certificates of stock, when all the stock authorized to be issued by their charter had been issued, and delivered them to a party who was knowing to the facts and to the fraud in issuing them, and who transfered them to an innocent holder; and the Court held them void in his hands, for want of *power* in the bank to issue them.

In 7 Ohio, 331, a case cited by Mr. Williamson, the Court say:

"It is true, that when public officers exceed the powers vested in them by general laws, their acts are no longer official but void."

"If the instrument, alleged to be a contract, was entered into by defendant's officers in a manner not authorized by law; in a manner in it are limited to such as may be proper and necessary ...

which they had no power to bind the corporation, then the stipulations in that contract did not bind the defendants for any purpose."

This was a case when the corporatian was setting up its want of authority as a defence to an action brought on a contract.

Brady vs. Mayor of New York City, 2 Bosworth Rep. 180.

This case was afterwards affirmed in the Court of Appeals.

20 N. Y. 312.

Wells, J., in Farmers' Loan and Trust Co. vs. Carroll, (5 Parb. 649,) quoted with approved in Brady vs. Mayor, &c., says:

Where a corporation relies upon a grant of power from the Legislature to do an act, it is as much restricted to the mode prescribed by the Legislature for its exercise, as to the thing allowed to de done."

Again in same case, Brady vs. Mayor, &c.:

"Those who deal with corporations whose mode of dealing is prescribed in their charter, must take notice of such prescription at their peril."

"Where officers of a municipal corporation do an act in excess of the corporate powers, the corporation is not bound; and when the statute, under which a corporation acts, restricts its action to a particular mode, none of the agents through whom the corporation acts can bind it in any other than the mode prescribed.

Those who deal with a corporation the mode of whose action is thus limited, must take notice of the restriction in its charter, and see to it that the contracts on which they rely are entered into in the manner required by the charter."

Abbott's N. Y. Digest, 98, *title Contract*, and numerous cases there cited.

"Where a specific act is directed to be done by a particular agent, it must be done by that agent."

These cases enunciate the true principles as applicable to all corporations, and should be applied with a more liberal construction in favor of a *quasi* or putative corporation than to any other when sued upon a contract, and for this there are many forcible reasons.

First, a man is compelled to be a member of such a corporation. It is not a liability or responsibliy of his own choosing, but he is placed in it for the purpose of government. It is not a trading corporation, nor are any of its acts or contracts made for the purpose of gain, but are limited to such as may be proper and necessary in the political adminis-

tration of its affairs, and its contracts, are therefore necessarily few and simple in their character.

Second. Its charter, or the law by which it is governed in the exercise both of its corporate and political powers, is always public, it forms a part of the statute laws of the State, of which every man is as much bound to take notice as of the criminal law of the land.

Third. All its acts and proceedings are open to the examination and scrutiny of the public, and all, or nearly all, are a matter of record in the public offices of the county; so that the rule can be applied with less danger of doing third parties injustice, than in cases where the charters are private acts, and their manner of doing business is more complicated and less open and notorious, and at the same time the rights and interests of a large number of involuntary, confiding and unsuspecting corporators can not be tampered with nor jeopardized by those who fill official positions. A rigid adherence to this old and sound rule, is the only protection of the people against official abuse, ignorance, and corruption. Disregard it, and individual rights are swallowed up in corporation corruption.

But there is another class of authorities bearing on this same subject which are more directly in point, and apply the rule above enunciated.

Pierce on American R. R. Law, 123, says:

"The provisions of the act authorizing municipal corporations to subscribe for shares in the stock of a Rail Road company, and to issue bonds in payment thereof, must be complied with, and if not followed, the bonds will be void in the hands of the company."

In New York, where it was necessary to file the consent of two thirds of the tax payers of the town in the county Clerk's office before making the subscription, the Court say:

"The utmost that the purchasers of the bonds were required to ascertain was, that such R. R. Co. had been organized, and the assent and affidavit required by statute filed, that there was apparant authority to execute the bond, and these things only were necessary to such apparent authority.

Gould vs. Venice, 29 Barb. 451.

In Mercer Co. vs. Pittsburg, &c., 27 Penn. State Rep. 39, where the law authorized the county commissioners to make the subscription it having been first recommended by the grand jury, and the grand jury did recommend a subscription "not exceeding $150,000," and the commissioners made a subscription under the recommendation, the Court

held that the recommendation of the grand jury was not sufficiently certain and definite, that they should have fixed the amount, and that the subscription and bonds issued were void for want of authority in the commissioners.

In Clapp vs. Cedar Co., 5 Clark, (Iowa,) 15, it is decided that bonds issued by a county in payment for R. R. stock are negotiable instruments, but not binding on the county, if issued without authority of law. The Court says:

"It is a paper executed by a public officer, on behalf of the public, and there must be authority for it to stand upon."

In New York the law required a good and unencumbered title to be conveyed where a county purchased lands for county purposes. The supervisors took a title which was imperfect: held that the selection was inoperative; held also that a contract made with builders for the erection of buildings thereon for county purposes is unauthorized, and the contractors have no claim on the county for the erection of the buildings.

Gillespie vs. ——, 23 Barb. 370.

In Missouri, also, this question has been before the courts in City and county of Saint Louis vs. Alexander, 23 Mis., 513. The language of the Act there which authorized the subscription was not so direct and positive in its terms requiring the vote to be taken, as is the law in this state, as will be seen upon comparison; yet the court say, "We do not consider this requisition to test the sense of the majority of the qualified voters, as to the propriety of the subscription before it can be made by the city, as merely directory. It is a declaratory, positive prerequisite. It must be complied with before the power can be rightfully exercised. The act here cannot be done lawfully if this prerequisite be not complied with; it must be observed and obeyed in order to give vitality and legal effect to the act to be afterwards performed."

In the same case, in speaking of the county subscription, which was made without a valid election, the same having been held before the law went into effect, the court say:

"It was illegal in our opinion for the County Court to subscribe the stock under this Act, without taking the previous necessary step of submitting the question to the voters of the county, and the Act must be in force before such a step could lawfully be taken."

In Aspinwall vs. Commissioners, 22 Howard, 374, was a case from Indiana, where a vote was taken which resulted in favor of the subscription, and subsequently the constitution of Indiana was amended so as

to prohibit counties from taking the stock, and after the change in the constitution, the county made the subscription and issued the bonds, and they passed into the hands of innocent holders. The court say:

"We have arrived at the conclusion that both these questions presented to us by the court below must be answered in the negative, with some reluctance, as, for aught that appears in the case, the subscription to the stock by the Board of Commissioners was made and the bonds issued in good faith to the Railroad Company, and also sold by it and purchased by the plaintiffs in confidence of their validity; but after the best consideration the court has been able to give the case, it has been compelled to hold, for the reasons above stated, that the subscription was made and the bonds issued in violation of the constitution of Indiana, and therefore without authority and void."

It can make no difference as to the invilidity of a contract whether it is prohibited by statute or constitutional law. They both rest on the same foundation—"*without authority*," and necessarily "void." The conclusion follows the premises in all cases.

We come now to the examination of the decisions of this State.

"The words 'such authorized subscription' necessarily refer to the authority conferred by a majority of the voters ascertained by the election provided in this section. The vote resulting in favor of such subscription or purchase, is necessary to authorize the County Judges or City Counsel to act, and is a limitation upon the discretionary power conferred by the first section, *as without such vote they cou'd not subscribe, whatever might be the desire of the citizens of the County or City.*"

Supervisors vs. People, &c., 25 Ills. 181, was a *mandamus* to compel the county to issue bonds, and also a suit in *assumpsit* by the assignee of a coupon which had been issued. The defence was that the Board of Supervisors had ordered the election and issued the bonds, and there was in that county a special Act in force giving this power to the County Court."

The court held that the bonds issued were void, and refused to grant the writ. The court say:

"As well might the sheriff or the Circuit Court have undertaken to perform these acts and execute these bonds, as this Board of Supervisors. There was a total want of authority, and the acts were *consequently void.*"

In this case, both the election was ordered and the bonds issued by the improper authority; but we conceive that the difference between it

and the case at bar are immaterial. The Board of Supervisors could as well adopt the Act of a political caucus in calling and holding the election, as that of the County Court. It could with the same propriety be said that the County Court could go on, having held the election, and make the subscription, and thereupon the Supervisors could take up the unfinished work and complete it. This is not the law. That which is done by a tribunal without authority, is not done at all. And the Board of Supervisors could no more adopt this election held by the County Court, than they could dispense with the election entirely. It *might be* an index to the feelings of the people,—"an informal ballot," to use a convention phrase; but without the election required by law, the Board could not make the subscription, "whatever might be the desire of the citizens of the county."

"Courts of justice cannot regard the wishes of a majority of the members of a corporation, unless expressed in a valid form in conformity with the by-laws and charter."

German vs. ———, 14 Louisana, 811.

Bearing on this question is the language of the court in Clark vs. Supervisors, 27 Ills. 309. "The Board had ordered the election; canvassed the vote; decided that a majority had determined upon subscription, and had resolved that the county would take the stock and issue the bonds. In all this they were exercising a power delegated by the General Assembly, *and this power they could not have delegated to any other person or tribunal.* Its exercise was confided to them alone, and they only could execute it legally."

But we now come to the last authority which we shall cite on this branch of the case, and that is the case in the 27 Ills. 310, above referred to, and which we consider entirely conclusive of the question.

In that case the court say:

"The case under consideration presents the question, whether bonds issued under such a vote (that is, a vote ordered by County Court, and bonds issued by Supervisors) and in the hands of innocent holders, are *void*, or are only voidable, and may be ratified by subsequent acts of the county, acting through its constituted authorities, and is capable of being ratified whether any act has been done having that effect. If an election were held without warrant of law, or if it were ordered by a person or tribunal having no authority, there could be no doubt that the whole proceeding would be absolutely void. *Such an election and every subsequent step would be unauthorized and void, and therefore* INCAPABLE *of* RATIFICATION *by the county authorities.* But an election held under

the authority of an order of the proper authorities, and in the main conforming to the requirements of the statute, but wanting in some particular not essential to the power to hold an election, and acquiesced in by the people and approved by their agents the county authorities, would render bonds thus issued binding when in the hands of innocent holders."

It does seem to us that it is impossible for a court to use plainer language. It needs no comment or explanation; and if the court should reverse this cause, it would only have to repeat the above as a sufficient opinion in this case.

The court then proceed to discuss what they call an irregularity, submitting two propositions at once, and in overruling the objection they say: Now in this case there was no want of authority to order the election, but simply an erroneous mode of submitting the questions.

In speaking of Schuyler County case, the court say:

"In that case there was no authority to order the election by the body assuming to act. But this irregularity (submitting two propositions at once) only being such as would prevent the bonds from being issued, and not sufficient to render them void when thrown into the market, we must hold that these bonds are valid and binding upon the county." (See the whole opinion.)

III.

The next question is, could the county authorities ratify the contract by any subsequent acts of their own?

Clearly upon principle they could not. How could they ratify a contract which they had not authority to make, and especially without any further or other authority than that which they had at the time they made it. The bare statement of the proposition conveys its own answer. Many of the authorities previously referred to in this brief are in point on this question, and especially the one in 27 Illinois, which we consider decisive. The court say that such a contract is "*incapable of ratification by the county authorities.*"

A contract *mala prohibita* is as incapable of ratification as one *mala in se.* [Story on Cont., 600.]

"A void contract can not be ratified." [Story on Agency, 140, and note, referring to Coke's Litt.]

"A confirmation doth not strengthen a void estate." It may aid one which is voidable, "but it can not work upon an estate which is void in law."

In a case before cited, 27 Penn. State Rep. 390, the court use this language:

"As the commissioners had no original authority to make the subscription, it is scarcely necessary to say, that they possessed no power by any subsequent action to ratify their own unauthorized proceedings." "The officers of a corporation can not ratify their own unauthorized act."

Hotchin vs. Kent, 8 Mich. 526.

States, counties and other municipalities are organized for governmental purposes, with power to pay as they go. If they create debts, they do so under general or special law; without law the creation of a debt is *void*. If a law exists for the creation of a debt, unless such debt is created substantially according to law, no liability attaches to the county; and if void in the first hands, it is always void, and no principle of ratification can be applied as to validate the void act of the State or county authorities. It becomes a dry question of power.

IV.

Can there be *bona fide* holders of these bonds without notice? We answer no.

And it seems that on the plainest principles in an ordinary case of mere agency, without noticing the question of power, that the question must be answered in the negative. If an agent is authorized to do an act upon a certain condition precedent, is not the party dealing with him bound to look to the authority of the agent and know that the condition precedent is complied with?

But this case rests on a stronger reason. The Supervisors derive their authority to act from the law, which is public, and the condition precedent is not only one which is in its nature public, but is also a matter of record in its public offices; and the purchasers of these bonds are bound to look to these records, and if they show *prima facie* that the board was not authorized in law to issue the bonds, then they took them with notice, and stood in no better condition than the original holders.

If authorities on this point are necessary, the following are conclusive:

In the *Iowa* case above cited, the court use this language:

"The purchaser of these bonds was not bound to look behind the record, nor was he bound to look to it that it was true. It is true, as urged by defendant's counsel, that he was to see to it that the bond was issued under authority of law, but when he finds that the records show sufficient for this, he is justified in purchasing."

One who, instead of examining into the validity of proceedings to authorize a local improvement, enters into a contract with a corporation to do the work, and performs it, relying on their representations that their proceedings are regular, can not recover from the corporation damages for such false representations. He might have ascertained its falsity by reference to the records, and to allow him to recover, *would evade the statutory restrictions on the power of the corporation.*

Swift vs. City, (1857) 24 Barb. 427.

Again in same case:

"The provisions of the act were public. The plaintiff is as much bound by them as the city: all the preliminary proceedings leading to the determination of the common council to make the improvement in question were also matters of public record in the office of the City Clerk; as such they were accessible to plaintiff, and he is fairly chargeable with notice of their contents."

Several of the cases cited on other points are also applicable to this point, and there is unbroken current of authorities to the same effect.

In this case the county records showed affirmatively that the election had been held by a tribunal totally without authority; that the first act of the supervisors was the subscription. The plaintiff was bound to take notice of it, and he is not a *bona fide* holder. It is no more binding in his hands than that of the R. R. Company, in whose hands it is admitted they were void.

Each purchaser of a promissory note made by an agent on its face, is bound to see to it that the agent had authority to make the note, and if he takes it without any such inquiry, he takes it at his own peril. The principal would not be bound, let it pass through never so many hands, if his name was signed to it by the agent without authority. Would not the same rule apply with for more force here, for various reasons of a public nature previously adverted to in this brief?

thority arose. In this case it is true that the county Court ordered the election, but the point that the election was ordered by the improper

V.

The acts mentioned in the replication do not amount to a ratification. All these acts were done by the same Board of Supervisors who issued the bonds, and no act was done by the people except to pay the tax which was demanded of them and which it was cheaper to pay than to engage in expensive litigation. Where a body politic and corporate, composed of numerous members who rely upon their public officers and servants to protect their rights, and who are generally ignorant both of the law and the facts, is sought to be charged, even if the contract was one which was capable of being ratified, mere acquiescence in the acts of the public officers ought not to prejudice them. They should not be held to the same strict rule as private corporators, organized for purposes of profit and gain, and in which generally every man is on the alert and alive to everything which may affect his interest. Public officers and those who deal with them should be taught that their unauthorized, illegal, and often corrupt acts will not become valid and binding, merely because a confiding and laboring people do not fail to discover and repudiate such acts as promptly as the quick and freqnently unscrupulous dealer in stocks would, under the same circumstances. The people demand that barriers which the law has wisely and humanely erected between them and the acts of their ignorant or corrupt officers shall not be lightly destroyed, but only for weighty and grave reasons, and that those who deal with such officers shall look to the law and see to it that the contract is made under authority, and that the people are not swindled either by the ignorance or corruption of the officers with whom they contract.

In conclusion, we wish to give a short notice to some of the points and authorities which will probably be relied upon by appellee, and especially to notice a brief in the case by Hon. M. Williamson, who decided the case in the Court below, it being the only brief of appellee which we have yet seen.

Most of the points in that brief have been already answered in this, but we wish to examine some of his authorities.

The first case which we wish to notice is the case of Stark Co., 24 Ill. 75. The language of the Court on the question of ratification in this case is not a question of power, but merely the act of the agent of the board in taking up one old bond and issuing several bonds of $1,000 each in its place. They do not question the legality of the subscription, so that no question of *power* and ratification of an act done without authority arose. In this case it is true that the county Court ordered the election, but the point that the election was ordered by the improper

tribunal was not made in that case; on the contrary, the counsel for the county very unadvisedly assumed and admitted that the County Court was the proper tribunal to order the election, as appears from his brief, as published in public papers at the time, and as we have no doubt will appear from an examination of his brief now on file in this Court. The question was for the first time presented to the mind of the Court in the case in the 27 Ill., where it was fairly met and deliberately decided. Counsel seeing no other way of avoiding the effect of that decision will, (as they did in the Court below) insist that it is a mere *dictum*. We do not so regard it. The Court say: That the question was before them. It was the main point made by the county. It is true the Court might have decided the case, and declined to have decided the point, just as it might decline to have decided, more than half the questions which are raised and decided in this Court; but we understand it to be the proper practice, for the Court to decide in every case, upon every question which is raised upon the facts as they appear on the face of the record. The question was fairly and fully presented to the mind of the Court, fully argued and decided without the least hesitation or doubt, and this Court will scarcely, at the demand of these bondholders, recall and overrule that decision, and bid a final adieu to all the time-honored landmarks of the law for the purpose of gratifying the insatiate maw of private corporations for power and plunder, and give free license to them and corrupt officials to plunder the people, until they are full. It is no new principle, no new rule, which we ask the Court to enforce; but principles as old as the common law itself, and which we conceive the good of the public demands should be enforced. And what is the few paltry dollars involved in this principle, to the importance of establishing, and defining the rights of the people correctly? The State could better pay the money herself, than have a decision of this Court laying down such a rule as will have to be adopted to sustain this case. It would be a wrong which would affect the people of every county in the State.

An examination of the case in 8 Ohio Stat. Rep. 401, cited with much apparent confidence on the question of ratification, will show that the court decided that the new constitution did not repeal the law, and the court finds from the facts that the law was complied with in giving the election notices. And that case as an authority falls to the ground.

An examination of the case in 7 Ohio, 331, will show that the Act of the Legislature made the certificates of the Town Trustees of their proceedings filed with the County Auditors, conclusive evidence of the legality of the proceedings, and of the validity of the subscription and bonds, and that the act had been complied with. And this was done, which of course ended the case.

It is true, the court then proceeds to give what they no doubt considered some very good moral advice to the people of the township, but in the course of so doing legal principles for a moment flash across their vision, and they say:

"It is true, when public officers exceed the powers vested in them by general laws, their acts are no longer official, but void."

The case in 8 American Law Reg. 603, and some other cases cited by Williamson, we have not seen, but apprehend that an examination of them will show that they are no more pertinent than the cases in Ohio. In 8 Am. L. R. 693, the court expressly places the ratification on the ground that at the time the City Council ratified the bonds they would have had authority to make the bonds. In 6 Am. L. R. 595, the election was regularly held and subscription made, and the fact as to the amount of the private subscription was not fundamental in its character.

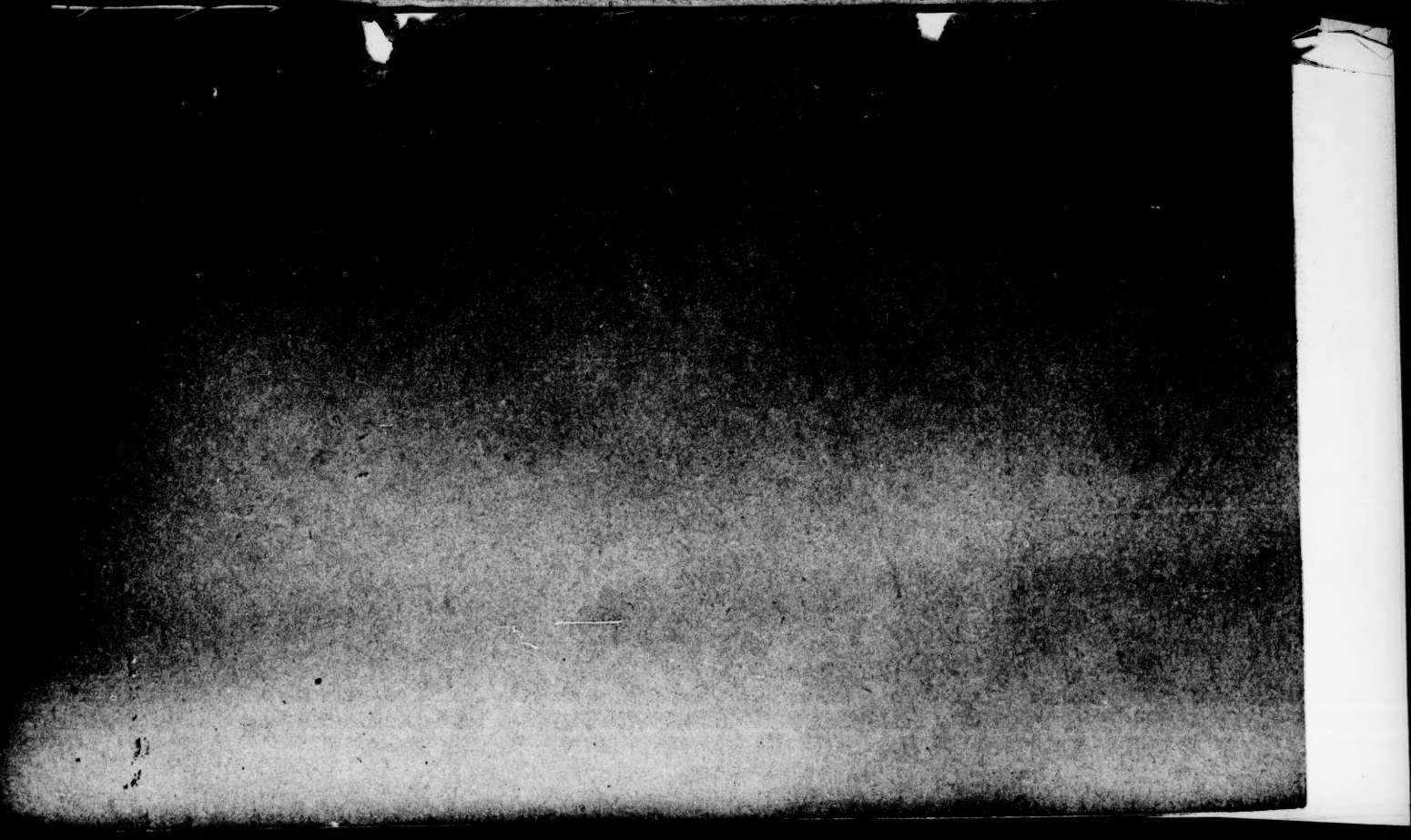
The case in 7 Ohio, 358, is more than answered by the weight of authority in this brief, nearly all the cases cited being cases in which the corporation was setting up the want of authority as a defence; and they only say in that case that a different rule ought to prevail, not that it does, and we are not certain whether they mean that it does, not having examined the case.

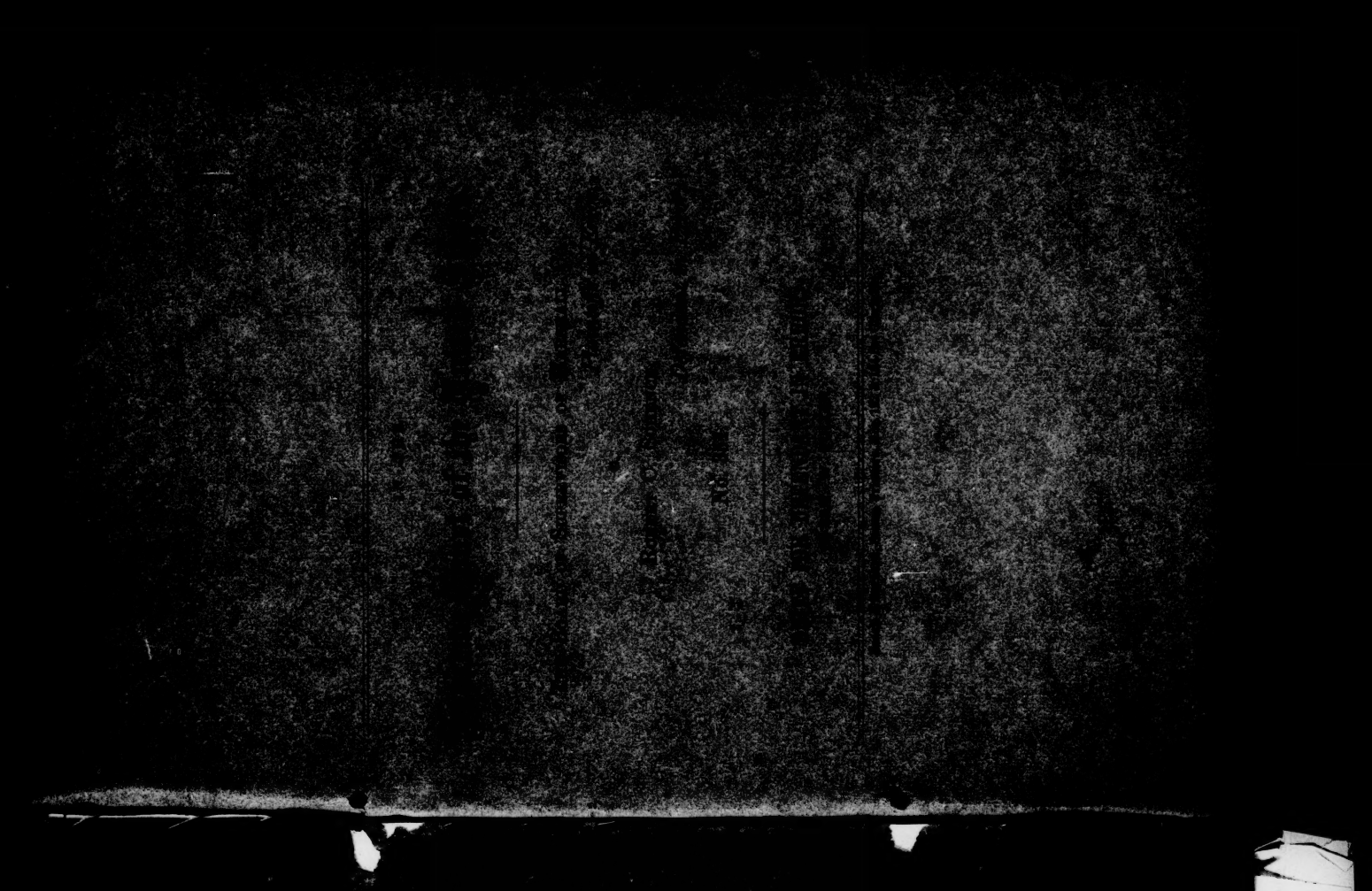
In 21 Howard, 544, an election was held under proper authority, and the Court merely refused to examine into the question of irregularities, as would be the case in this state.

In the Schuyler County case, Mr. Williamson failed to notice that there was, in same case, a suit in *assumpsit* on coupon by an innocent holder, and that it was declared void.

We know not what other authorities may be cited by appellee. We presume we shall reply to them in written or oral argument.

S. L. RICHMOND AND
BANGS & SHAW,
Counsel.





IN THE

SUPREME COURT OF THE UNITED STATES,

December Term, A. D. 1866.

THE BOARD OF SUPERVISORS OF MARSHALL CO.,
Plaintiffs in Error,

v.

ROBERT C. SCHENCK,
Defendant in Error.

No. 351.

BRIEF FOR DEFENDANT IN ERROR.

THIS was an action of assumpsit brought by the defendant in error against the plaintiffs in error in the Circuit Court of the United States for the Northern District of Illinois, to recover the interest due upon certain bonds which were issued by the county of Marshall, in that State, to the Western Air Line Railroad Company, in payment for one thousand shares of the stock of that company.

The declaration is in the common form, and sets out the substance of the bonds, and the coupons attached to them. The defendants filed a special plea, to which the plaintiff replied, and the defendants demurred to the replication. The demurrer was overruled by the Circuit Court, and judgment entered thereon in favor of the plaintiff, for the amount due upon the coupons sued on, with interest, and

the overruling of the demurrer is the only error assigned upon the record, and presents the only question in the case.

The facts upon which the question arises are fully and concisely stated in the plea and replication, and therefore need not be repeated here.

The question is, whether the said bonds, which amount to one hundred thousand dollars, are void in the hands of *bona fide* holders before maturity, because the election, which authorized their issue, was called by the County Court of Marshall county, instead of the Board of Supervisors of that county, notwithstanding all the subsequent proceedings were regular, and the county has for seven or eight years levied and collected taxes to pay the interest upon them, and has paid the interest as it fell due, until the default stated in the declaration in this case.

That question was presented and decided by this court in the case of *The Commissioners of Knox County* v. *Aspinwall, et al.*, 21 Howard, 539.

In that case, it appeared that, under the law of Indiana, it was the duty of the sheriffs to give the notices of the election; but the election authorizing the issue of the bonds was called by the Board of Commissioners of Knox county, and the court held, that as all the subsequent proceedings were regular, the error in calling the election did not invalidate the bonds in the hands of *bona fide* holders. See pages 542–3–4.

The same question was again raised, and decided the same way, in the case of *Bissell et al.* v. *City of Jeffersonville*, 24 Howard, 287.

These cases are in harmony with those subsequently decided by this court, in which the same or similar questions were presented.

Woods v. *Lawrence County*, 1 Black, 386;

Moran, et al., v. *The Commissioners of Miami County*, 2 Black, 722;
Gelpcke, et al., v. *The City of Dubuque*, 1 Wallace, 175;
Van Hostrup v. *Madison City*, 1 Wal., 291;
Meyer v. *The City of Muscatine*, 1 Wallace, 384;
Thomson v. *Lee County*, 3 Wallace, 327;
Rogers v. *Burlington*, 3 Wallace, 654.

II.

By levying and collecting taxes to pay the interest on its bonds, and paying that interest for a series of years in the manner stated in the replication, the county of Marshall has recognized and ratified the bonds as binding obligations upon the county, and is now estopped to deny their validity.

The President, &c. of the Town of Keithsburg v. *Frick*, 34 Ill., 405.

The language of the court in this case is as follows:

"The corporation is now estopped from setting up any "irregularity in their issue, inasmuch as they have repeat- "edly recognized their validity by paying them out, levy- "ing taxes and paying interest on them for a series of "years." "It is now too late to raise a question as to "the regularity of their issue."

Society for Savings v. *The City of New London*, 29 Conn., 174;
Tash et al. v. *Adams*, 10 Cushing, 252;
The State of Ohio on Relation of Garrett et al. v. *Van Horne*, 7 Ohio State, 327;

The State of Ohio on the Relation of Smead et al. v. *The Trustees of Union Township*, 8 Ohio State, 394;
The Trustees of Goshen Township v. *Shoemaker et al.*, 12 Ohio State, 624;
Gould v. *The Town of Venice*, 29 Barb., 443;
The Farmers' and Mechanics' Bank of Kent County v. *The Butchers' & Drovers' Bank*, 16 New York, 125;
Clark v. *City of Janesville*, 10 Wis., 136;
Mills v. *Gleason*, 11 Wis., 470.

These decisions of the several State courts agree with those of this court, cited under the first point, and here the argument of this side of the case would end, but for the fact that the Supreme Court of Illinois has decided that the bonds now under consideration are void, because the election was called by the County Court instead of the Board of Supervisors. *Cook* v. *The Board of Supervisors of Marshall County*, April Term, 1864, not yet reported; but the plaintiff in error will probably furnish the court a copy of the opinion in that case.

We will not criticise or discuss the soundness of that decision. It is enough for us to show, that it is not one of that class of decisions of the State courts which are binding upon this court. The cases in which the decisions of the State courts will be followed by this court, and those in which this court will follow its own views of the law, without regard to the decisions of the local tribunals, are clearly stated and distinguished in the case of *Swift* v. *Tyson*, 16 Peters' Rep., 18–19, as follows:

"In all the various cases which have hitherto come be-
"fore us for decision, this court have uniformly supposed
"that the true interpretation of the thirty-fourth section

" limited its application to State laws, strictly local; that " is to say, to the positive statutes of the State, and the " construction thereof adopted by the local tribunals, and " to rights and titles to things having a permanent locality, " such as the rights and titles to real estate and other mat- " ters immovable and intraterritorial in their nature and " character. It never has been supposed by us that the " section did apply, or was designed to apply, to questions " of a more general nature, not at all dependent upon lo- " cal statutes or local usages of a fixed and permanent op- " eration, as for example, to the construction of ordinary " contracts, or other written instruments, and especially to " questions of general commercial law, where the State " tribunals are called upon to perform the like functions as " ourselves; that is, to ascertain upon general reasoning " and legal analogies, what is the true exposition of the " contract or instrument, or what is the just rule furnished " by the principles of commercial law to govern the case. " And we have not now the slightest difficulty in holding, " that this section, upon its true intendment and construc- " tion, is strictly limited to local statutes and local usages " of the character before stated, and does not extend to " contracts and other instruments of a commercial nature, " the true interpretation and effect whereof are to be " sought, not in the decisions of the local tribunals, but in " the general principles and doctrines of commercial juris- " prudence. Undoubtedly the decisions of the local tribu- " nals upon such subjects are entitled to, and will receive, " the most deliberate attention and respect of this court, " but they cannot furnish positive rules or conclusive au- " thority by which our own judgments are to be bound up " and governed. The law respecting negotiable instru- " ments may be truly declared, in the language of Cicero, " adopted by Lord MANSFIELD in *Luke* v. *Luke*, 2 Burr. R.,

" 883, 887, to be, in a great measure, not the law of a sin-
" gle country only, but of the commercial world."

Thomas, et al., v. *Hatch*, 3 Sumner, 170;
Williams v. *The Suffolk Insurance Co.*, 3 Sumner, 270;
Foxcroft v. *Mallett*, 4 Howard, 353;
Neves, et al., v. *Scott, et al.*, 13 Howard, 268.

For two notable modern instances of this court refusing to follow the decisions of the local courts, see

City of Chicago v. *Robbins*, 2 Black, 418;
Gelpcke, et al., v. *City of Dubuque*, 1 Wallace, 175.

Bonds and coupons, like those involved in this suit, are commercial securities. They are negotiable instruments. The questions pertaining to them are, therefore, commercial questions, and must be decided by the rules of commercial law. This court has always expounded that law for itself. Its right to do so was expressly declared in the case of *Swift* v. *Tyson*, 16 Peters, 1, and that decision has been followed in numerous instances, and never, that we know of, departed from.

This case does not present the question of the power of counties, in the State of Illinois, to issue bonds, for that power was expressly given them, by the legislature of that State, in 1849. See session laws of that year, page 28, and an amendatory act passed in 1854 (session laws, page 11), and those laws have been held constitutional and valid, by the Supreme Court of Illinois.

The People, ex rel., Prettyman v. *Tazewell County*, 19 Illinois, 406;
Johnson v. *The County of Stark*, 24 Illinois, 75;
Butler v. *Dunham*, 27 Illinois, 474.

The questions in the case concern the exercise, by the county, of an undoubted power, and whatever irregularities have occurred, cannot prejudice the rights of third persons, who have acquired those rights upon the faith that the county proceeded regularly in the exercise of its corporate powers.

The election, it is true, was called by the County Court, but it was fairly conducted, and the result showed that the requisite legal majority was given in favor of issuing the bonds.

"If the votes of the citizens are freely and fairly deposited at the time and place designated by law, the intent and design of the election are accomplished. It is the will of the electors, thus expressed, that gives the right to the office, or determines the question submitted, and the failure of the officers to perform a mere ministerial duty, in relation to the election, can not invalidate it, if the electors had actual notice, and there was no mistake or surprise."

Taylor v. *Taylor*, 10 Minn., 107.

As this court has twice decided that the very irregularity which occurred in this case does not invalidate the bonds in the hands of *bona fide* holders (21 Howard, 539; 23 Howard, 381), we rely upon those decisions, as decisive of the present case, even against the decision of the Supreme Court of Illinois, which will be cited for the plaintiff in error, because that decision is not one of the class which this court is bound to follow, even if it had any intrinsic merits of sound reason and exact justice to support it, against the long established rule of this court.

The case of *Cook* v. *The Supervisors of Marshall Co.*, which the plaintiffs in error rely upon, was decided at the

same term of court, as that of *The President, etc., of the Town of Keithsburg* v. *Frick*, 34 Illinois, 405, cited above.

In the latter case the court held, that levying taxes, and paying interest upon its bonds with the proceeds, ratified the bonds, and cured all irregularities in their issue. In the former case, it was held that it did not.

It is not our duty to reconcile these decisions. They are to be excused and explained only upon the ground of the great press of business upon the court which made them. In view of these discordant decisions of the State court, this court is left free to follow its own precedents, and to affirm the judgment of the Circuit Court, thus preserving the honor and good faith of the county, and giving its commercial securities that value in the market, which its citizens intended them to have, and which it is for their best interest to preserve.

SAMUEL W. FULLER,

for Defendant in Error.

CHICAGO, Jan. 11, 1867.